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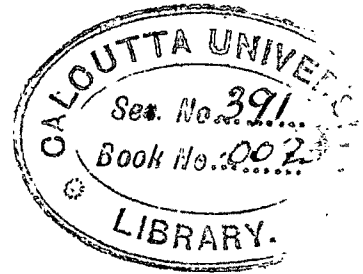
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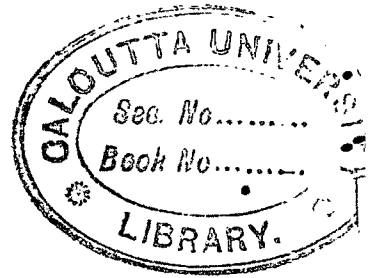


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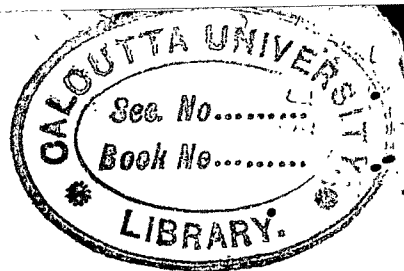
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by the President of the United States." John Adams wrote of it in 1815:⁵

Mr. Madison's administration has proved great points, long disputed in Europe and America.

1. He has proved that an administration under our present Constitution can declare war.

2. That it can make peace.

The sixth of our foreign wars was that with Spain. Here a special Act of Congress (of April 20, 1898) presented an ultimatum, and was in effect a declaration of war, unless the demand stated should be immediately complied with. Spain did not comply with it, but withdrew her minister at Washington, and on April 25, 1898, a declaration of war was recommended by the President, adopted by Congress, and approved by him. This enacted "that war be, and the same is hereby declared to exist, and has existed since the twenty-first day of April Anno Domini eighteen hundred and ninety-eight, including said day, between the United States of America and the Kingdom of Spain."

It will be observed that, in this formal declaration, no causes of grievance against Spain are stated.

Of our six foreign wars, then, preceding those now being waged with Germany and Austria-Hungary, only one, and that the first, was prosecuted under a declaration of war setting forth the causes leading up to it.

An important advance in regulating the relations of nations to each other was made in 1907 by the Convention as to the mode of opening hostilities, which was adopted *ad referendum*, by the second Hague Conference.

In this (Article I) the contracting Powers recognized that hostilities between them should not commence without a preliminary and unequivocal notice, which should have either the form of a declaration of war, stating the reasons for it (*motivée*), or that of an ultimatum, with a declaration of war in case of the rejection of the ultimatum. One of the leading participants in the conference has expressed himself thus in regard to the provision for a statement of the reasons for declaring war:

⁵ Life and Works, X, 167.

It will be noted that the declaration and the ultimatum require a statement of the reason of the war, and it is to be hoped that the difficulty of a perfect justification may exercise a restraining influence upon prospective belligerents. . . . It must be admitted that the convention is very modest, for it leaves the Powers free to declare war at their pleasure, provided only that the pretext be capable of formulation.⁶

The United States ratified this convention in 1909; and Article I was to take effect in case of war between two or more of the contracting Powers. Germany having also ratified it during the same year, when the President last spring became satisfied that the United States should enter into war with that empire, or that war substantially existed between them already, he called a special session of Congress to which he communicated his views on April 3, 1917.

As causes of war he mentioned these:

1. Germany's announcement that from and after February 1, 1917, "it was its purpose to put aside all restraints of law or of humanity and use its submarines to sink every vessel that sought to approach either the ports of Great Britain and Ireland or the western coasts of Europe or any of the ports controlled by the enemies of Germany within the Mediterranean."

2. Germany's execution of that purpose, involving such a submarine warfare against commerce as is a "warfare against mankind" and all nations, in the course of which American ships have been sunk and American lives taken.

3. The vindication of human right, of which the United States "is only a single champion."

4. Germany's denial of "the right of neutrals to use arms at all within the areas of the sea which it has proscribed, even in the defense of rights which no modern publicist has ever before questioned their right to defend."

5. Her intimation that the armed guards carried by American merchantmen would be treated as pirates.

6. The menace to the peace of the world and the freedom of its peoples flowing from "the existence of autocratic governments, backed by organized force which is controlled wholly by their will, not by the will of their people."

⁶ Scott, *The Hague Peace Conferences*, I, 519, 522.

7. The impossibility of maintaining "a steadfast concert for peace," except by a partnership of democratic nations, as "no autocratic government could be trusted to keep faith within it, or observe its covenants."

8. The sending by Germany of spies and intriguers into the United States.

9. Our conviction "that in such a government, following such methods, we can never have a friend; and that in the presence of its organized power, always lying in wait to accomplish we know not what purpose, can be no assured security for the democratic governments of the world."

10. Our resolution to fight "for the ultimate peace of the world and for the liberation of its peoples, the German peoples included; for the rights of nations, great and small, and the privilege of men everywhere to choose their way of life and of obedience."

11. The duty of the United States, as "one of the champions of the rights of mankind," to make these "as secure as the faith and the freedom of nations can make them," and to make the world "safe for democracy."

12. That Germany is acting through "an irresponsible government which has thrown aside all considerations of humanity and of right, and is running amuck."

13. That the United States will "fight for the things which we have always carried nearest our hearts — for democracy, for the right of those who submit to authority to have a voice in their own governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world itself at last free."

To this message Congress promptly responded by the following resolution of April 6, 1917:

Joint Resolution Declaring that a state of war exists between the Imperial German Government and the Government and people of the United States and making provision to prosecute the same.

Whereas the Imperial German Government has committed repeated acts of war against the Government and the people of the United States of America; therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the state of war between

- the United States and the Imperial German Government which has been thrust upon the United States is hereby formally declared; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the government to carry on war against the Imperial German Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

It will be noticed that the distinction is here observed which was made in the President's message, between the Imperial German Government and the German people, and that, on the other hand, it is stated that the German Government has made war against both the Government and the people of the United States.

It is to be noted, also, that Congress has not specified what were the "repeated acts of war against the Government and the people of the United States" by which war has been "thrust upon the United States."

It is hardly open to dispute that of the grounds of complaint mentioned by the President in his address, those above numbered 1, 2, 4, 5, 8, 9, and 12 may be regarded as American grievances, justifying war.

Those numbered 3, 6, 7, 10, 11, and 13, present a somewhat different question. In them German attacks upon the peace of the world, and the freedom of peoples; the evils of autocratic government; the liberation of the peoples of the world, the German peoples included; and the duty of making the world safe for democracy, of securing the rights and liberties of free peoples, and of seeking to set up such a concert between them as will make the whole world free, are set forth as causes for our going to war. The matters which the President here sets up touch us less directly than do the other matters to which he referred. They are questions of world politics, and of worldwide application. Congress did not see fit to put them into its list of grievances, in terms; but it does not invalidate the declaration of war, that the President and Congress have not agreed on precisely the same statements to support it. They have agreed, however, in the result of making, by the action of each, a declaration that war exists.

Such a declaration is analogous to a judgment of a court, held by several judges, which recites certain premises on which it is founded. All the judges may agree on the terms of the judgment, and yet a mi-

nority may dissent from the reasons stated by the majority in support of it. Such a difference of opinion does not make the judgment any the less conclusive on the parties. The result is reached unanimously, though by different paths.

In most countries no questions of this character can arise, because a declaration of war has been with them a simple act of the executive power, though it may subsequently require parliamentary ratification. In the United States it is a dual act. It is put in words by Congress: it is then to be put in effect by the President's approval of those words and proclamation of what has been so enacted. A new international *status* is thus created, authorizing such action as he may deem proper in his capacity of commander-in-chief of the army and navy. In the language of the Supreme Court of the United States:

War can alone be entered into by national authority; it is instituted for national purposes, and directed to national objects. . . . Even in the case of one enemy against another enemy, therefore, there is no color of justification for any hostile act, unless it be authorized by some act of the government giving the public constitutional sanction to it.⁷

The manner in which our seventh foreign war (that with Germany) was declared, in April, 1917, was largely followed when, in December, 1917, our eighth foreign war was declared against Austria-Hungary. The President made an address to Congress, in which, referring to the war between the United States and Germany, he said that he should not go back to relate its causes, but desired to consider its objectives. As to what these were, he continued, he and Congress were "the spokesmen of the American people." The great and immediate object was "to make conquest of peace by arms." The United States could not regard the German Government as the spokesman of the German people. When that people should say, "through properly accredited representatives," that they would agree to a settlement "based upon justice and the reparation of the wrongs their rulers have done, the United States would regard the war as won." This country did "not wish in any way to impair or to rearrange the Austro-Hungarian Empire." Nor was any interference with the internal affairs of Germany intended. The worst that could happen to her people was that if they continued to be

⁷ Talbot v. Janson, 3 Dall., 133, 160.

- under masters interested to disturb the peace of the world, "it might be impossible to admit them to the partnership of nations which must henceforth guarantee the world's peace," or "to admit Germany to the free economic intercourse which must inevitably spring out of the other partnerships of a real peace." Finally, he recommended as a military necessity an immediate declaration that the United States was in a state of war with Austria-Hungary, now "simply the vassal of the German Government," and "not acting upon its own initiative or in response to the wishes and feelings of its own peoples, but as the instrument of another nation."

He then reverted to the reasons for which the United States had entered into war. It had "been forced into it" to save its political institutions "from corruption and destruction." "The purposes of the Central Powers," he added, "strike straight at the very heart of everything we believe in; their methods of warfare outrage every principle of humanity and of knightly honor; their intrigue has corrupted the very thought and spirit of many of our people; their sinister and secret diplomacy has sought to take our very territory away from us and disrupt the union of the States. Our safety would be at an end, and our honor forever sullied and brought into contempt, were we to permit their triumph. They are striking at the very existence of democracy and liberty. It is because it is for us a war of high, disinterested purpose, in which all the free people of the world are banded together for the vindication of right, a war for the preservation of our nation and of all that it has held dear of principle and of purpose, that we feel ourselves doubly constrained to propose for its outcome only that which is righteous and of irreproachable intention, for our foes as well as for our friends. The cause being just and holy, the settlement must be of like motive and quality. For this we can fight, but for nothing less noble or less worthy of our traditions. For this cause we entered the war and for this cause will we battle until the last gun is fired."

The House Committee of Foreign Affairs, on the day (December 5th) when this address was delivered, agreed unanimously to report a declaration of war with this preamble:

Whereas, the Imperial and Royal Austro-Hungarian Government has severed diplomatic relations with the Government of the United

States of America, and has committed acts of war against the Government and the people of the United States of America, among which are its adherence to the policy of ruthless submarine warfare adopted by its ally, the Imperial German Government, with which the United States of America is at war, and by giving to its ally active support and aid on both land and sea in the prosecution of war against the Government and people of the United States of America; therefore, be it, etc.

On further consideration and consultation with the Senate Committee on Foreign Relations, the Act of December 7, 1917, was passed, in which for the preamble in the original draft was substituted the following:

Whereas, the Imperial and Royal Austro-Hungarian Government has committed repeated acts of war against the Government and the people of the United States of America; therefore be it, etc.

The final draft of the declaration of war against Austria-Hungary, therefore, unlike the earlier draft of the House committee, hardly seems to comply with the spirit of the Hague Convention of 1907, if read without reference to the previous address of the President on the subject of such a war. If, on the other hand, passed as it was with substantial unanimity, it may properly be read as approving and supplementing that address, and as incorporating the gist of that into itself, any such ground for criticism would be removed. In that all-important state paper, the President, it will be remembered, used the word *we* to signify himself and Congress. In other words, he spoke for both. To hold that he could properly do this would be to advance little, if at all, the prerogatives of the Executive. There is no people in the world today whose chief ruler has an extent of war power equal to that of the President of the United States. He is independent of cabinet control. He can call the ministers of the different departments of executive power into council with him or not, as he sees fit. He can indicate governmental policy in unofficial correspondence or public addresses, without reserve. He has for any such address what Lord Bryce has described as "an unrivaled platform."

In 1908 the Kaiser gave permission to publish the report of an interview between him and a foreigner upon an important matter of foreign policy. At once, he was called to account before the Reichstag. The Imperial Chancellor, as president of the Bundesrath, has a right to be

present at the deliberations of the Reichstag. The Chancellor at that time appeared before it and substantially repudiated what the Emperor had said at the interview in question, practically pledging himself that in the future nothing of such a nature would be said by the Crown that had not the previous approval of the constituted authorities.⁸

The President of the United States is subject to no such restraints. He holds an office which makes him in all other matters affecting international intercourse the spokesman of the whole country. Is he any the less such with respect to a declaration of war? He holds, not a part, but the whole, of the executive power of the United States. Its scope is not circumscribed by many limitations. Of such as there are, two are of particular importance, namely, the provision that while he alone can negotiate treaties, they are of no force until ratified by a two-thirds vote of the Senate; and that by which, while he alone can nominate to the higher public offices, the appointments can only be made with the consent of a majority vote of the Senate.

Four powers, though in their nature and history primarily of an executive character, are expressly conferred: namely, that of receiving ambassadors and other public ministers; that of commissioning all officers of the United States; that of granting reprieves and pardons; and that of a conditional veto. These four lines of authority are not strictly a part of the executive power of the United States, though, regarded as a matter of general political government, they belong in their nature to the executive power.

Two things are certain, when the functions of the President are considered with respect to their relation to a declaration of war. He has the right, and is under the duty, to communicate to Congress, before such a declaration is made, the facts and circumstances that in his opinion may call for it. It is also of no force, unless he approve it. It is certain, further, that he cannot approve it in part and disapprove it in part. He must, as in the case of any other measures of legislation, approve the whole or disapprove the whole.

There are then three stages in proceedings for declaring war by the United States. The first comes with the doings of the President in

⁸ American Political Science Review, XI, 660.

informing Congress of the state of our relations with the Power against which war may be declared. The second is the doings of Congress in making the declaration, and the third is the approval of the declaration by the President.

The second stage has become much more important since the Hague Convention of 1907, ratified by us and by Germany and Austria-Hungary in 1909, which requires the declaration, if not connected with an ultimatum, to state the reasons (*motifs*) for its adoption. The President, it may be assumed, if he recommends a declaration of war, will always state what seem to him the reasonable grounds for it. Congress may coincide with him in his views and give the same reasons for its action which the President has given. It may, however, coincide with him in his conclusion, but prefer to rest the declaration on a part only of the grounds specified by him, or even on grounds not stated by him at all. He has had his say, and Congress is now to speak and to speak decisively, subject always to the conditional veto.

Whenever a declaration of war has been enacted and approved, it unquestionably becomes the right and duty of the President to give public notice of it to all neutral Powers. To the Power against which war is declared no formal notice is absolutely necessary before the opening of hostilities, nor indeed ever. It will hear of it soon enough through channels of information open to all.

The most important thing here is to give notice of the fact of the declaration, and the time of its going into effect. It is less necessary to specify immediately the grounds on which it rests. As to what these are, is the declaration itself now the sole evidence? Or can the President, in making his announcements to foreign nations, add to or subtract from those declared by Congress to support its action?

"Results, not processes," Samuel Warren once wrote, "are for the eye of the world." It must be remembered that in announcing a declaration of war, the chief end in view is to state the fact of the existence of war, as evidenced by such a declaration. The grounds for it, or the want of grounds for it, have become, for the time being, comparatively unimportant.

John Bassett Moore begins his consideration of the title "War" in his Digest of International Law, by this remark:

Much confusion may be avoided by bearing in mind the fact that by the term "War" is meant not the mere employment of force, but the existence of the legal condition of things in which rights are or may be prosecuted by force.⁹

A declaration of war announces, or creates and announces, such a legal condition of things. It may or may not go into further particulars, according to the position of the government making it, in regard to the Hague Convention of 1907. If it states what constitutes this legal condition, and purports to describe the controlling facts leading up to the declaration, its validity and effect will not depend on the truth or falsity or relevancy of what may be set forth in its assignment of causes. They are mentioned merely to give public notice of the grievances which the nation making it claims to have suffered from the nation against which it is directed.

A declaration of war at once charges the President with a double responsibility. In addition to his holding the civil executive power, he must now assume the supreme direction and command of military and naval activities. This, however, he takes subject to limitations not ordinarily existing in other countries.

As the Supreme Court of the United States has held in a leading case, the duty and power of the President under a declaration of war are "purely military," and if he makes conquests they cannot

extend the operation of our institutions and laws beyond the limits before assigned to them by the legislative power. . . . The genesis and character of our institutions are peaceful, and the power to declare war was not conferred upon Congress for the purpose of aggression or aggrandizement, but to enable the general government to vindicate by arms, if it should become necessary, its own rights and the rights of its citizens. . . . A war, therefore, declared by Congress, can never be presumed to be waged for the purpose of conquest or the acquisition of territory; nor does the law declaring the war imply an authority to the President to enlarge the limits of the United States, by subjugating the enemy's country.¹⁰

The war power, however, as shared between the President and Congress, is not limited to achieving military successes. "It carries with it inherently the power to guard against the immediate renewal of the

⁹ VII, 153.

¹⁰ *Fleming v. Page*, 9 How., 603, 614.

conflict, and to remedy the evils which have arisen from its rise and progress." ¹¹

As the war power is shared between the President and Congress, but Congress does not share in the executive power, the breadth of the President's prerogatives as to the closing of a war becomes of special importance. The limits imposed directly by the Constitution are few; its main one being the requirement of the consent of the Senate. Those imposed by implication are, so far as the courts have thus far spoken, also few, but of high importance.

The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.¹²

The preamble of the Constitution must also be considered in this connection. "We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America." May this be construed to include a delegation of power to declare war in order to secure liberty to foreign peoples? Our war with Spain assumed that there is such a power, and the assumption met with general public acquiescence. It was made by the President, this year, in advising the declaration of war by the United States against Germany and Austria-Hungary; repeated in his public letters and addresses, and has a strong current of public sentiment in its support. In view of the general trend of opinion as to enlarging the functions of the general government, it is quite unlikely that the courts will ever take a different view.

To make a declaration of war requires the assent of Congress as well as of the President. To end a war, it is enough for him to obtain the assent of the Senate, if he acts under the treaty-making power. Peace could, no doubt, also be restored by an Act of Congress. As a declara-

¹¹ *Stewart v. Kahn*, 11 Wall., 493, 507. ¹² *Ex parte Milligan*, 4 Wall., 2, 120.

tion of war takes the shape with us of a statute, it would seem that it can be repealed by a statute. Its normal effect can also be subjected to limitations and exceptions resting on the authority of the President alone.

While the general and natural mode of ending a war is by treaty, peace may presumably be secured also by an absolute conquest followed by the destruction of the enemy's government. So far as concerns the United States, however, this would seem excluded by the doctrine of *Fleming v. Page*, unless what had been, for the time being, held as enemy's territory should be only taken to be turned over to such new government as the inhabitants might agree to institute.

SIMEON E. BALDWIN.

ADDRESSES BY ELIHU ROOT ON INTERNATIONAL SUBJECTS ¹

THE first impression that we obtain upon opening this book is one rather of surprise at the extraordinarily wide range of subjects which Mr. Root has treated in the course of his addresses and speeches on international questions, to which the volume is confined, — a range that covers the ground and sets forth the essential facts as well as the arguments which have served to build up American public opinion and to direct the international thought of this country for almost a generation. The relations with Japan, the Panama Canal, the Conferences at The Hague, the rights and duties of nations, and the protection of citizens residing abroad, have filled a large part of public attention during the last quarter of a century; indeed, some of the questions included here, like the intercourse with Mexico and the Monroe Doctrine, have held the public interest since long before our own time.

Whilst these addresses have been brought together in one general classification under the title of the present volume, they are distinguishable in fact and may be separated into two sets of intellectual production, — and this by the method of Mr. Root himself in his treatment of them, — the one argumentative, as, for example, "The obligations of the United States as to Panama Canal Tolls," "The Treaty with Russia of 1832," the two discussions of the Ship Purchase Bill, and "The Mexican Revolution," all speeches delivered by him in his place in the United States Senate; and the other containing those thoughtfully prepared and highly finished essays presented by him on various public occasions or as presidential addresses at the annual meetings, during several successive years, of the American Society of International Law, which

¹ Collected and edited by Robert Bacon and James Brown Scott. Harvard University Press, 1916, pp. ix, 463.

illustrate at once by their breadth of view and scholarship the lucid processes of Mr. Root's mind.

International law and the principles which govern the intercourse between separate and independent peoples, their specific rights and obligations as neutrals or belligerents, in war or in time of peace, supply the theme, and very naturally so, of these discourses. So that, by reading them with careful attention, the student may traverse a very large part of the whole field, we may say, of foreign relations and reap at the same time the benefit to himself of having the directly expressed opinion of a statesman by whom many of these important questions have been argued and determined, during the last twenty years, in the foreign policy of our government.

If, on the one hand, the active practice of nearly half a century in the courts of law has produced that high degree of intellectual training with which he takes up and disposes of every legal problem that presents itself to him, the mature judgment, on the other, and the experience developed through his years in the United States Senate and through his service as Secretary of War and Secretary of State in the Cabinets of two Administrations entitle Mr. Root to speak on international subjects with an authority not exceeded by any public man, certainly in America, of our day.

It is interesting to note that, at the outset, in treating of foreign relations, under the head of "The Need of Popular Understanding of International Law," he asks for a clear comprehension of international legal questions, as also of the legally defined rights of a people. He insists too upon a conciliatory attitude toward the recognition of the rights of others in dealing with foreign states. This desirable condition, he says, is to be brought about by increasing "the general public knowledge of international rights and duties" and by promoting "a popular habit of reading and thinking about international affairs. The more clearly the people of a country understand their own international rights the less likely they are to take extreme and extravagant views of their rights and the less likely they are to be ready to fight for something to which they are not really entitled."

International law is conciliatory, then, and pacifying as long as the rights and obligations of each party in interest are fairly weighed and

kept in view, to the ends of justice and equity; and its rules of conduct are law so long as each party submits to them with a willingness to see them applied, for, says Mr. Root:

The true basis of business is not the sheriff with a writ of execution; it is the voluntary observance of the rules and obligations of business life which are universally recognized as essential to business success. Just so, while it is highly important to have controversies between nations settled by arbitration rather than by war, and the growth of sentiment in favor of that peaceable method of settlement is one of the great advances in civilization to the credit of this generation; yet the true basis of peace among men is to be found in a just and considerate spirit among the people who rule our modern democracies, in their regard for the rights of other countries, and in their desire to be fair and kindly in the treatment of the subjects which give rise to international controversies.

It is impossible, he says, that the human mind should be addressed to questions better worth its noblest efforts, offering a greater opportunity for usefulness in the exercise of its powers, or more full of historical and contemporary interest, than in the field of international rights and duties.

In this connection, and continuing in regard to the study and understanding of the law of nations, Mr. Root has developed his thought yet a step farther in the address which he delivered before the American Society of International Law, in 1915, entitled, "Should International Law be Codified?" the reply to which he made in his own declaration that, whilst codification is now already in process, step by step, as, for example, through the Declaration of Paris, the Treaty of Washington and the Conventions of Geneva and The Hague, "it must be pressed forward and urged by all possible means."

The very fact that there are no courts to establish precedents and no legislatures to make laws makes this necessary [says he]. All international law is made, not by any kind of legislation, but by agreement. The agreement is based upon customs, but the ascertainment and recognition of the customs is the subject of the agreement; and how can agreement be possible unless the subject-matter of the agreement is definite and certain?

The discussion of these and similar questions, pertinent to and arising out of the legal rights or obligations of independent states, ex-

P 35 460

tends itself, under different forms amidst the widely different circumstances which present themselves with each particular case, throughout the whole series of these addresses. One traces everywhere in reading them that large comprehension of detail and the liberal and just readiness to admit into consideration the rights and privileges on both sides of the controversy which are, in fact, characteristic of Mr. Root's method in discussing questions of international law.

It is not necessary for us to do more at this time than to refer the reader to the numerous articles contained in the volume itself. We cannot pass by without referring, however, to one or two of these, as well because of the peculiar interest with which they will be read by students of international questions as on account of the intrinsic value of the investigations made by Mr. Root into the merit of the questions to which they directly relate and of the conclusions arrived at by him.

Certain of these, as, for instance, "The Real Monroe Doctrine," may be accepted as amongst the most decisive pronouncements that have been formulated upon the subject in recent times. It is not too much to say that, in this particular address, which was delivered before the American Society of International Law, in April, 1914, we have an authoritative declaration of the policy of the United States Government itself in regard to its attitude towards foreign Powers in their relations with the American Continent. The scholar or diplomatist of any country, who seeks to inform himself, could not do better than to take it into attentive consideration and study.

The events of the last three years in Europe have changed considerably, no doubt, the actual relationship between the European States and the Republics of South America; and they have substantially removed, for the duration at least of the lives of those of us who are living today, any menace of colonization or aggression upon the part of foreign governments that might cause apprehension to us. But we have this statement, made by Mr. Root in the most emphatic terms, that, whilst it is undoubtedly true that the specific occasions for the declaration of Monroe no longer exist, — the Holy Alliance long ago disappeared, the nations of Europe no longer contemplate the vindication of monarchical principles in the New World, and France, the most active of the Allies, is herself a republic, yet —

The declaration, however, did more than deal with the specific occasion which called it forth. It was intended to declare a general principle for the future, and this is plain not merely from the generality of the terms used but from the discussions out of which they arose and from the understanding of the men who took part in the making and of their successors.

As the particular occasions which called it forth have slipped back into history, the declaration itself, instead of being handed over to the historian, has grown continuously a more vital and insistent rule of conduct for each succeeding generation of Americans.

No one ever pretended that Mr. Monroe was declaring a rule of international law. . . . It is a declaration of the United States that certain acts would be injurious to the peace and safety of the United States and that the United States would regard them as unfriendly.

The doctrine is not international law, but it rests upon the right of self-protection and that right is recognized by international law.

So, also, in "The Ethics of the Panama Question" we have what may be taken in the same manner as an authoritative statement in regard to American policy, of extraordinary value to those who seek the point of departure and the real forces which, having been brought to bear through a series of years, reached finally an effective and determining governmental action. This address, delivered before the Union League Club of Chicago, in 1904, bears the imprint of a complete mastery of the subject and of the views upon it that were held by the Administration at the time, as these were reflected from Mr. Root's own participation, not only in the discussions which took place, but undoubtedly in the decisions arrived at, whilst the impression was still fresh upon his mind.

He announced in opening the address that he intended to present some of the fundamental facts bearing upon "the question of right in the Panama business," in the hope that they might thus reach the attention of those of our citizens who were troubled about the matter.

There remain [said he] good and sincere men and women who have thought our course to be wrong, and many others, whose character and patriotism entitle them to the highest respect, are troubled in spirit. They would be glad to be sure that our country is not justly chargeable

with dishonorable conduct. May the time never come when such men and women are wanting, or are constrained to remain silent, in America.

He made it evident that the relations of the United States Government to the Republics of New Granada and Colombia for many years before must not be left out of sight, nor their logical and inevitable consequences neglected, if the situation at the time of the actual construction of the Panama Canal is to be understood and the measures taken by the Administration are to be clearly described as a means toward the carrying out of that tremendous undertaking. Mr. Root has defined these in a manner to allay apprehension, not only on the part of those who listened to him in Chicago, but of those also, now and hereafter, who shall read his addresses contained in this volume. It throws an exceedingly illuminating side-light upon the whole subject as it was regarded by the authorities in Washington at that time, and is undoubtedly so regarded now.

The United States considered that "by the rules of right and justice universally recognized among men and which are the law of nations, the sovereignty of Colombia over the Isthmus of Panama was qualified and limited by the right of the other civilized nations of the earth to have the canal constructed across the Isthmus and to have it maintained for their free and unobstructed passage." By the treaty of 1846, New Granada applied to the Government of the United States to engage to protect that country against the seizure of the Isthmus by other foreign Powers. "In effect, she acknowledged the right of way and asked the United States to become the trustee of that right which qualified her sovereignty." Mr. Root declared that New Granada recognized by this transaction the subordination of her sovereignty to the world's easement of passage by railroad or by canal, and, apprehending that other nations might seek to exercise that right through the destruction of her sovereignty and the appropriation of her territory, she procured the United States to assume the responsibility of protecting her against such treatment.

The United States received a grant of power and assumed a duty herself to keep the transit free and uninterrupted and unmolested, and to keep the territory of the transit neutral.

The duties assumed by the United States to maintain neutrality and free passage were undertaken for the benefit of all the world.

The effect of the treaty was, therefore, that foreign Powers were to be excluded from the opportunity to construct the canal; and, consequently, if private enterprise should fail to build it, the United States assumed the obligation to build it herself. We could not refuse to permit the work to be done by any one else competent to do it and refuse the burden ourselves. The obligation of the United States to build the canal and the obligation of Colombia to permit her to build it, both followed necessarily from the relations and obligations assumed by them in the treaty of 1846.

We took the responsibility [says Mr. Root] upon ourselves alone, to do for civilization what otherwise all the maritime Powers would have united in requiring; it was for us alone to act; and I have no question that our right and duty were to build the canal, with or without the consent of Colombia.

But, even beyond that, he declared that:

Throughout the centuries since Philip II sat upon the throne of Spain, merchants and statesmen and humanitarians and the intelligent masses of the civilized world have looked forward to this consummation with just anticipations of benefit to mankind. No savage tribes who happened to dwell upon the Isthmus would have been permitted to bar this pathway of civilization. By the universal practice and consent of mankind they would have been swept aside without hesitation. No Spanish sovereign could, by discovery or conquest or occupation, preëempt for himself the exclusive use of this little spot upon the surface of the earth dedicated by nature to the use of mankind. No civil society organized upon the ruins of Spanish dominion could justly arrogate to itself over this tract of land sovereignty unqualified by the world's easement and all the rights necessary to maké that easement effective. The formal rules of international law are but declarations of what is just and right in the generality of cases. But where the application of such a general rule would impair the just rights or imperil the existence of neighboring states or would unduly threaten the peace of a continent or would injuriously affect the general interests of mankind, it has always been the practice of civilized nations to deny the application of the formal rule and compel conformity to the principles of justice upon which all rules depend.

We have further in this address a narrative of the events in Panama through the period of unrest and open discontent under the control of the Colombian authority against which the incessant efforts of the people of the Isthmus were directed. Mr. Root sets forth their political development, with the close analysis which always accompanies the investigation of a legal or constitutional question by him. He arrays the facts and supports the arguments with documentary proofs, so that the reader may follow the course of local history in Panama into and through the contests in which the people fought to exhaustion in 1885 to prevent the loss of their liberty and were defeated through the action of the naval forces of the United States. Three times since then they arose in rebellion against their oppressors. In 1895 they arose and were suppressed by force; in 1899 they arose again, and for three years maintained a war for liberation, which ended in 1902 through the interposition of the United States by armed force. The rising of November, 1903, was the fourth attempt to regain their rights. This time the United States Government would not, in view of the strained relations created by the situation at Bogota, exercise her authority again, as she had done before, to aid the troops of Colombia. "She was under no obligation to do so, and she could not do so without aiding in the denial of her own rights and the destruction of her own interests." Upon that the people of Panama relied in their last attempt, and they relied upon it with reason.

Every one knows that in the revolution which then broke out these people succeeded finally in declaring and maintaining their independence, and that subsequently to this, as the United States decided that the inhabitants of Panama were the real owners of the canal route, we might, in consequence, deal with them as an independent sovereign state. The circumstances led, naturally, through the course of reasoning adopted at that time by the Administration at Washington, to the final adjustment and to the completion, years ago now, of the Panama Canal; and Mr. Root shows that this country's participation in the enterprise was just and right.

By all the principles of justice among men and among nations [said he] that we have learned from our fathers, and that all peoples and all governments should maintain, the revolutionists in Panama were right,

the people of Panama were entitled to be free again, the Isthmus was theirs and they were entitled to govern it; and it would have been a shameful thing for the Government of the United States to return them again to servitude.

It is hardly necessary to say now that our Government had no part in devising, fomenting, or bringing about the revolution on the Isthmus of Panama.

The temptation is great, as one turns the pages of these addresses and speeches, to linger over them in order to study each by itself and dwell longer upon its subject-matter with the enjoyment and relish that satisfy the mind in the treatment of them by so strong and skillful a hand. We might say that the feeling is not unlike that of being in the midst of a collection of rare books, which one takes down with pleasure and holds separately in one's hand, loath to put the volume back again upon the shelf.

It would be well if every one in America could read, for instance, the address entitled: "The Real Questions under the Japanese Treaty and the San Francisco School Board Resolution," delivered in 1907 as his inaugural address before the first annual meeting of the American Society of International Law. It would be a benefit to us all, as it would be to any nation, if people were enabled more generally to inform themselves as to the elements of a controversy which has arisen, or threatens to arise, between them and another Power equally sensitive and proud; especially so, if we approach the subject with the dispassionate judgment which Mr. Root displayed in this treatment of the questions here involved.

These were not only exceedingly delicate in so far as they became a menace to our peaceable relations with Japan, but the whole incident was erroneously considered and quite generally misunderstood by our own people because it presented an apparent conflict between the treaty-making power under the Constitution of the United States, on the one hand, and the rights of the citizens of California within their authority to make their own State laws and govern themselves, on the other. There could, of course, be no question in the mind of any American that the intention of the California people was to do right, — nor does anybody doubt it now, — and, that being so, the popular belief was that their official and public acts were legal even when they decided that Japanese

- children should not be educated in the same schools with their own children.

But they had offended by this the national sensibilities of the Japanese people, and the Imperial Government of Japan appealed to its treaty with the Federal Government of the United States, claiming the rights which had been mutually conceded under that treaty as to the privileges, liberties, and rights of the nationals of the one high contracting Power within the territory of the other, which led, as Mr. Root said, "to much excited discussion of the subject in the newspapers and in public meetings and in private conversation."

Happily, he was able to add:

The excitement has now subsided, so that it may be useful to consider what the question really was, not because it is necessary for the purposes of that particular case, but because of its bearing upon cases which may arise in the future under the application of the treaty-making power of the United States to other matters and in other parts of the national domain.

Mr. Root was himself Secretary of State at that time. The views which he expresses are conclusive and convincing throughout the address. Indeed, the discussion by him of the constitutional powers brought into question here, as between the several State Governments and the Federal authorities, has the incisive force of an argument before the Supreme Court. Speaking as a statesman, and not only as a lawyer, in the latter part of his address, he teaches us a lesson in international relations which may well serve, in dignity and high-minded forbearance, as a model in modern diplomacy:

There was one great and serious question underlying the whole subject which made all questions of construction and of scope and effect of the treaty itself — all questions as to whether the claims of Japan were well founded or not; all questions as to whether the resolution of the school board was valid or not — seem temporary and comparatively unimportant. It was not a question of war with Japan. . . . There never was even friction between the two governments. The question was: What state of feeling would be created between the great body of the people of the United States and the great body of the people of Japan as a result of the treatment given to Japanese in this country?

What was to be the effect upon that proud, sensitive, highly civilized people across the Pacific, of the discourtesy, insult, imputations of in-

feriority, and abuse aimed at them in the columns of American newspapers and from the platforms of American public meetings? What would be the effect upon our own people of the responses that natural resentment of such treatment would elicit from the Japanese?

It is hard [he said] for democracy to learn the responsibilities of its power; but the people now, not governments, make friendship or dislike, sympathy or discord, peace or war, between nations. . . . The people who permit themselves to treat the people of other countries with discourtesy and insult are surely sowing the wind to reap the whirlwind, for a world of sullen and revengeful hatred can never be a world of peace.

It is to Mr. Root that the country owes the benefits that have come to it and to our people through the adjustment of this very serious and difficult controversy. It was recognized abroad, as well as at home, to be one of the most distinguished services rendered by him to the United States Government, and was singled out as such and formally presented, at Christiania, as one of the chief considerations which led the Committee to award to him the Nobel Prize in 1912. We find the announcement in *Le Prix Nobel en 1913* (Stockholm, 1914) that:

The most difficult task that fell to Mr. Root as Secretary of State was the settlement of the dispute between the United States and Japan on the question of Japanese immigrants in California, in 1906-07. It is impossible to give here the history of this great question, which assumed a threatening aspect in the winter of 1907. It will suffice to say that the peaceful settlement of the dispute, ratified by the action of the Congress at Washington in passing the immigration act of March 19, 1907, followed by the identic note of November, 1908, was due to the efforts of Mr. Root.

We incline somewhat to the idea that, in many respects, the address which Mr. Root prepared as his speech of acceptance of the Nobel Prize, in 1914, contains more of his own personality and brings one closer to him as a man than any of the others that are printed in this volume. There is a composure of expression in it which renders it especially agreeable in tone. One reads it with the feeling that one is more intimately acquainted with him than ever before. There is no controversy under discussion, or difference of opinion to be adjusted by force of argument, or international hostility to be conciliated. But, dealing tran-

- quilly with the great subjects that concern all nations alike, Mr. Root speaks, out of his world-wisdom, to his fellowmen.

Mr. Robert Bacon and Dr. James Brown Scott are to be congratulated upon the service that they have rendered to readers and thinkers by the collection and publication of these addresses.

CHARLEMAGNE TOWER.

TREATMENT OF ENEMY ALIENS

MEASURES IN RESPECT TO PERSONAL LIBERTY

(Being Part XIV of Some Questions of International Law in the European War, continued from previous numbers of the JOURNAL.)

WRITERS on international law are now in substantial agreement that a belligerent ought not to detain enemy subjects, confiscate their property, or subject them to any disabilities, further than such as the protection of the national security and defense may require. Vattel, in 1758, appears to have been the first writer to adopt the view that had come to be generally held by publicists at the time the present war broke out. "The sovereign," he said, "who declares war has not the right to detain the subjects of the enemy who are found within his state, nor their effects. They have come to his country in public faith; in permitting them to enter and live in the territory, he has tacitly promised them all liberty and surety for their return. A suitable time should be given them to withdraw with their goods; and if they stay beyond the time prescribed, it is lawful that they should be treated as enemies, though as disarmed enemies."¹ Alexander Hamilton, in defending the Jay Treaty of 1794, declared that the right of holding property in a country always implies a duty on the part of its government to protect that property and to secure to the owner full enjoyment of it. "Whenever, therefore," he added, "a government grants permission to foreigners to acquire property within its territories, or to bring and deposit it there, it tacitly promises protection and security — the property of a foreigner placed in another country, by permission of its laws, may be justly regarded as a deposit of which the society is the trustee."² Westlake, in 1907, adverting to the nu-

¹ *Droit des Gens*, Liv. III, Ch. IV, sec. 63. Vattel adds that in his time it was the practice to allow enemy subjects a period in which to withdraw with their effects.

² Letters of Camillus, No. XIX.

merous treaty stipulations on the subject, remarked that they might be deemed to amount to "a general agreement, on the part of governments, that modern international law forbids making prisoners the persons of enemy subjects in the territory at the outbreak of war, or, saving the right of expulsion in case of apprehended danger to the state, refusing them the right of continuous residence during good behavior."³ Referring to the right of expulsion, Ullmann, a respectable German authority, remarks that expulsion can be resorted to against the subjects of the enemy state, but only after a suitable delay has been offered in order to enable those affected to wind up their affairs.⁴

Owing, however, to the recent introduction of compulsory military service on the continent of Europe, there has been a growing disposition to recognize the right of belligerents to detain males liable to such service, in order to prevent them from returning home and enlisting in the enemy's army. On account of their residence in the enemy country and the opportunity thus afforded of acquiring more or less familiarity with its topography and the location of military forts, arsenals, munitions depots, the extent of its resources, and the like, their service would be of special value to their own country.⁵ We find, therefore, in the sixth edition of Hall, who, in an earlier edition of his work, had condemned the right of detention and had characterized the expulsion of the Germans from the Seine in 1870 as "harsh," a statement by Atlay that now, since "the liability of the whole male population to military service has become the almost universal rule on the continent of Europe," the rule in respect to detention "has assumed a new aspect."⁶ The discussions at the Second Hague Conference make it quite clear that it was considered inadmissible to imprison enemy subjects at the outbreak of war, but it should be remarked that those discussions did not touch upon the question of the treatment of such persons who were reservists and who, if allowed to depart, would join the forces of the

³ International Law, Part II, p. 42.

⁴ *Völkerrecht* (1908), p. 474.

⁵ Cf. Bonfils, sec. 1053.

⁶ International Law, 6th ed., p. 386. Other writers who defend the right to detain such persons are Calvo, *Droit Int. Pub.*, Vol. IV, p. 54; Bonfils, *Manuel*, p. 590; Lawrence, *op. cit.*, p. 390; Twiss, *Law of Nations*, Vol. II, sec. 50; Rivier, *op. cit.*, Vol. II, p. 230, and Liszt, *Das Völkerrecht*, sec. 39.

enemy.⁷ While, however, as stated above, there is now a good deal of authority for the view that it is permissible to detain males of military age who are liable to service, there are writers who do not sympathize with the exception which it has been proposed to make to the general rule.⁸

When the present war broke out, the status of enemy aliens had not been dealt with by any of the great international conventions, further than the much controverted Article 23 *h* of the Hague Convention of 1907 concerning the laws and customs of war on land, which, according to some authorities, makes it obligatory upon belligerents to allow such persons access to their courts. The treatment which must be accorded to them, therefore, rests upon the customary law of nations and particular treaty stipulations. The departures which have been made from custom, practice, and the opinions of the text writers, as summarized above, will appear from the following pages.

THE ENEMY ALIEN PROBLEM OF THE PRESENT WAR

If the practice during the present war has been less liberal than that of recent wars, it may be explained in part by the extreme bitterness of passion which has seemed to dominate all the peoples involved, and in part by the changed conditions resulting from the presence of unexampled numbers of enemy aliens, many of whom were reservists, in the territories of the various belligerents at the outbreak of the war. This latter circumstance caused the problem of dealing with such persons to assume an importance never before known in any previous war, and greatly increased the difficulty of handling it with due regard to both the national defense and the heretofore recognized rights of the enemy alien population.

At the outbreak of hostilities there were more than 50,000 German subjects residing in the United Kingdom,⁹ besides about 8000 natural-

⁷ Compare Oppenheim in Roxburgh, *The Prisoners of War Information Bureau* in London, p. vii.

⁸ Compare Sir Ernest Satow in the *Publications of the Grotius Society*, Vol. II, p. 7; and Phillipson, *International Law and the Great War*, p. 30.

⁹ Sir Edward Grey to Mr. Page, Nov. 9, 1914, *House of Commons Sess. Papers*, Misc. No. 8 (1915), [Cd. 7857], p. 15.

ized British subjects of German origin, the latter of whom English public opinion scarcely differentiated from the former class. Besides, there was a considerable number of Austrians, Hungarians, and Ottoman subjects. In France the enemy alien population was much larger. According to Professor Valéry, of Montpellier, the total number of foreigners in that country was approximately one and a half million, a large number of whom were enemy subjects.¹⁰ The enemy alien population of Paris was especially large, being much greater than that of any other European capital.¹¹ The problem was less serious in Germany, where there were only about 5300 British subjects in the country. The number of persons of French nationality residing there was somewhat larger, although greatly inferior to the number of Germans in France. The outbreak of the war between Italy and Germany found about 30,000 Italian subjects in Germany and about 50,000 Germans in Italy. There were also large numbers of Germans and a considerable number of Austro-Hungarians in Belgium.

The situation in the United States was, by reason of the very large number of German subjects in the country, quite different from that in the countries of Europe, although, owing to the geographical remoteness of the United States from the theater of hostilities and its separation from the enemy country by the Atlantic Ocean, the danger from the presence of so large an enemy population was less serious.¹² On the other hand, the number of American citizens who remained in Germany after the outbreak of the war was very small, the number being less than one thousand.¹³ In every belligerent country large

¹⁰ *Revue Générale de Droit Int. Pub.*, 1916, p. 353. Compare the returns of the French census of 1911, *Bulletin du Ministère du Travail*, Jan.-Feb., 1916, pp. 55 ff., and June, 1916, pp. 234 ff.

¹¹ According to estimates published in *Clunet's Journal de Droit International* (1916, p. 157), there were in Paris at the outbreak of the war almost 400,000 foreigners.

¹² The total number of aliens registered in the United States on June 5, 1917, in pursuance of the terms of the draft law, was 1,239,179. Of these 111,933 were German subjects (*Cong. Record*, July 13, 1917, p. 5554). This number, of course, embraced only males between the ages of 21 and 30 years.

¹³ According to a census taken by the American Association of Commerce in Berlin, there were approximately 1200 Americans in Germany at the outbreak of war between the two countries. Many of these left shortly after the declaration of war, so that in September, 1917, there were hardly more than 700 American citizens in the Empire. *New York Times*, Sept. 13, 1917.

numbers of the enemy population consisted of persons who had been residents for many years. Many of them had married natives and had families; many were engaged in business or in the practice of professions; and many had acquired large property interests.

The presence of enemy subjects in such large numbers, especially in England and France, constituted a serious problem, the danger of which was accentuated by the fact that a large proportion of such persons were reservists who had had military training and who, if they had been allowed to depart, would have returned home to serve the armed forces of the enemy. The problem of dealing with them justly was further complicated by the existence in both countries, as in others where Germans resided in large numbers, of a highly organized and extensive system of espionage, for the Germans generally have acted in accordance with Treitschke's view that "in the national wars of the present day every honest subject is a spy." Under these circumstances, the countries situated in close proximity to Germany felt that the national security would be dangerously compromised by allowing the enemy alien population the same degree of freedom that had been generally accorded in the more recent wars of the past.

BRITISH POLICY

On the 3d of August, 1914, the day following the outbreak of war between Germany and Great Britain, Parliament passed the Aliens Restriction Act,¹⁴ authorizing the government to impose by Order in Council certain restrictions on aliens residing within the United Kingdom, without distinction between those who were subjects of an enemy state and those who were subjects of friendly Powers. The measures which the government was empowered to take included prohibiting aliens to land or embark in the United Kingdom; their deportation; requiring them to reside in certain designated areas; compelling them to register, and any other measures "which appear necessary or expedient, with a view to the safety of the realm." The Act prescribed appropriate penalties for violation of any Order in Council issued in conformity with the law, and gave the courts summary jurisdiction

¹⁴ Text in Pulling's Manual of Emergency Legislation, pp. 6-8, and in Baty and Morgan, War: its Conduct and Legal Results, pp. 470-2.

of cases involving such violations. The Act further declared that the onus of proving that a person was not an alien should lie upon him, thus reversing the old English rule that the burden of proof rests upon the party charging the disability.¹⁵

On the same day an Order in Council entitled "The Aliens Restriction Order" was issued in pursuance of the authority thus conferred, and it was followed by other supplementary and amendatory orders from time to time, while instructions and directions were frequently issued by the Secretary of State for Home Affairs. Portions of the order applied to all aliens, friendly and enemy alike, but its main purpose was to restrict the liberty of those of enemy nationality only. The order designated certain "approved" places in England, Scotland, and Ireland at which aliens of friendly Powers were permitted to land and from which they were allowed to depart, but enemy aliens were forbidden to land at or depart from such ports without the permission of a secretary of state.

The Secretary of State for Home Affairs was authorized to deport any alien (whether an enemy subject or the subject of a friendly Power) whenever in his judgment it was deemed advisable. Enemy aliens were prohibited without a permit from entering or residing temporarily in certain designated areas, several hundred in number, some of which embraced whole counties and many boroughs, parishes, and districts, especially on the seacoast.¹⁶ Enemy aliens residing anywhere in the United Kingdom, and all aliens, whether friends or enemies, residing in prohibited areas, were required to register with a local registration official, and in case of a contemplated change of residence they were required to furnish the registration officer full particulars in regard to the date of the proposed change and of the place to which it was proposed to remove.¹⁷ No enemy alien was allowed to travel

¹⁵ Bentwich in this JOURNAL for July, 1915 (Vol. 9), p. 644.

¹⁶ Permits to reside in the prohibited areas appear to have been granted rather freely. In December, 1916, 4294 enemy aliens were reported as residing in these areas. *Solicitors Journal and Weekly Reporter*, Dec. 30, 1916, p. 162.

¹⁷ Many complaints were made of the hardships which the registration requirement entailed in particular cases, *e.g.*, in the case of English women married to Germans. One case was reported of an English woman whose German husband had deserted her twenty years before, but who was required to register and report

more than five miles from his registered place of residence without a permit, which was limited to twenty-four hours, except in special circumstances. No enemy alien, without the written permission of the registration officer, was allowed to have in his possession any fire-arms, ammunition, petroleum, signaling apparatus, motor cars, cycles, or boats, air craft, cipher code, telephone installation, military or naval charts, and various other articles. Likewise, the circulation among enemy aliens of any newspapers printed wholly or mainly in the language of an enemy state was forbidden, except with the written permission of a secretary of state. The Secretary of State for Home Affairs was empowered to order any chief officer of police to close any premises used for the purposes of a club and habitually frequented by enemy aliens. Enemy aliens were prohibited from engaging in the business of banking, except with the written permission of a secretary of state, who was authorized to prescribe such conditions and restrictions as he deemed advisable, and no enemy alien who was at the time or had been engaged in such business was allowed to part with any money or securities of such bank.¹⁸ For the purpose of enforcing such orders, constables were authorized to enter, search, or occupy any premises in which the business of banking had been carried on by an enemy alien.

By an Order in Council of January 7, 1915, registration officers were authorized to grant to Turkish subjects belonging to the Greek, Armenian, or Syrian races, or members of any other community well known to be opposed to the Turkish régime, certificates of exemption from any or all of the provisions of the Aliens Restriction Order, except those which applied to alien friends.

To prevent evasion of the restrictions thus imposed by concealing their real identity, enemy aliens were prohibited from changing their names or the names of partnerships or companies of which they were members.

regularly to the police. *Solicitors Journal and Weekly Reporter*, Vol. 61, p. 732. By an Order in Council of Aug. 27, 1916, the Secretary of State was authorized to grant exemptions in special cases. *Ibid.*, Vol. 61, p. 741.

¹⁸ Licenses were granted to certain German banks from time to time in accordance with the provisions of this order.

At the outbreak of the war, the British Government accorded to German subjects a period of seven days during which they might leave, but it does not appear that any considerable number actually got away. Neither Germany nor Austria-Hungary, however, allowed any period of grace, and all male British subjects, regardless of their age or condition, were refused permission to return to their native country.¹⁹ Soon after the outbreak of the war the German Government informed the British Government through the American Ambassador at Berlin that it was prepared to allow British subjects then in Germany to leave, provided the British Government would accord reciprocal treatment to German subjects in Great Britain. In short, the German Government proposed that the British Government should exchange more than 50,000 Germans in England for some 5000 British subjects in Germany. The German population in England was classified as: (a) reservists, who were under duty to render military or naval service; (b) persons detained for military or naval reasons; and (c) noncombatants "not specially detained." Many reports having reached England that British subjects detained in Germany were being badly treated, the British Government gave serious consideration to the German proposal, and on August 31 replied expressing its willingness to permit all German women and children,²⁰ all males under sixteen years of age and over forty-four years, and all persons between those ages who were not under liability for military service in Germany and who would give an undertaking not to take part, directly or indirectly, in the operations of the war, to leave, provided the German Government would reciprocate. On September 15, the German Government replied to the British counter-proposal, offering to accept it in the main, except that it refused to allow the departure of British males of military age who were not under duty of military service in England, even though they were willing to give an undertaking not to take part in the operations of the war. It having in the meantime come to the

¹⁹ Sir Ernest Satow, in an article entitled "The Treatment of Enemy Aliens," published in the Publications of the Grotius Society, Vol. II, p. 8.

²⁰ The British Government stated that in fact it had from the first allowed women and children to leave England, although the German Government had not accorded reciprocity of treatment in respect to women of British nationality.

attention of the British Government that the liability to military service in Germany had been extended to include males up to the fifty-fifth year, the British offer was modified so as to withhold the privilege of departure to males between the ages of sixteen and fifty-five years. The German Government denied that compulsory military service existed for men over forty-four years of age, although it admitted that such persons were serving in the army as volunteers. The British Government took the position, however, that the fact that men up to fifty-five years of age were actually serving in the German army must be taken into consideration in reaching an agreement.

According to a telegram of October 22, 1914, from the American Ambassador at Berlin to the American Ambassador at London, Germany was allowing all British civilians, except men between the ages of seventeen and fifty-five, and also clergymen and physicians of all ages, to leave Germany, and Sir Edward Grey, in a communication to Mr. Page of October 28, informed him that the British Government was according reciprocity of treatment to German civilians belonging to these classes.²¹ But apparently the German Government still refused to allow the departure of males between the ages of seventeen and fifty-five who were willing to give a pledge not to take part in the war, and therefore the British Government was not prepared to release German subjects of this class. In reply to an inquiry from Berlin of November 3, 1914, received through the American Embassy, as to whether the British Government was arresting "wholesale" German subjects over forty-five years of age, Sir Edward Grey stated that no Germans over that age had been arrested. At the same time he asked the American Ambassador to call the attention of the German Government to the fact that there were upwards of 50,000 Germans residing in England, the presence of whom must necessarily be a cause of anxiety to the military authorities, who were charged with taking suitable measures for the defense of the realm. The German Government, on the other hand, he said, had not the same excuse for proceeding

²¹ Correspondence between His Majesty's Government and the United States Ambassador respecting the Release of Interned Civilians, etc., Misc. No. 8 (1915), [Cd. 7857], p. 13.

to a wholesale arrest of British subjects in Germany, since, owing to the small number of them, the scattered condition in which they live, and the different character of the classes to which they belong, they could not, under any circumstances, be regarded as constituting the same danger to Germany that the masses of German subjects in Great Britain constituted to that country.²²

On November 9, 1914, the American Ambassador at London received a telegram from Berlin, announcing that British subjects between seventeen and fifty-five had been interned, except clericals, doctors, and women, and British subjects from colonies or protectorates where Germans were not interned. Germany renewed its offer to release men over forty-five if England would do so. Sir Edward Grey, on November 12, replied, denying that there had been any general arrest of Germans over forty-five years of age, but that only individual suspects had been subjected to such treatment. Steps, he said, were being taken to release and send back to Germany all persons detained who were over fifty-five years of age, except a few suspects. Of the 27,500 male Germans above the age of seventeen in England, only 8,600 had been interned, leaving 18,900 at liberty, and of those interned 600 had been released within the last two or three weeks.²³

The correspondence between the two governments regarding the matter continued throughout the years 1915 and 1916.²⁴ The German Government desired first of all a general release by each belligerent of all civilians without exception held by the other. The British Government took the position that it could not afford to exchange the entire German population resident in Great Britain for the British population in Germany, owing to the very great disproportion in their numbers.

Finally, all hope of reaching an agreement on the basis of the British proposal having passed, the British Government, "from motives of humanity," yielded and agreed to release all German male civilians over forty-five years of age, provided Germany would release all British

²² *Ibid.*, p. 16.

²³ *Ibid.*, p. 24.

²⁴ The additional correspondence is found in two British White Papers, — Misc. No. 35 (1916) and No. 1 (1917) — issued in continuation of the White Papers already cited.

male civilians then held as prisoners. The British Government, however, insisted on a stipulation to the effect that each party to the agreement must have the right to detain for military reasons at least twenty persons who would otherwise be eligible for release. The German Government expressed regret that the British Government could not see its way clear to accept its proposal for the reciprocal release of all civilian prisoners, but nevertheless it agreed to accept the proposal for the release of all males over forty-five years of age as the only means of preventing the failure of the agreement. This agreement was definitely concluded in January, 1917.

According to the London press dispatches, Germany obtained under this agreement the release of about 7000 of her subjects held as interned civilian prisoners in England and the Dominions, whereas Great Britain on her part secured the repatriation of some 600 or 700 British subjects held in Germany.

It is unfortunate that an agreement for the release and repatriation of all interned civilians on both sides was never reached, but the very unequal numbers held by both belligerents made the problem a very difficult one. The British Government was quite aware that in case it released the entire German civilian population in return for the release of the comparatively small number of British subjects held in Germany, the effect would be to strengthen the military power of Germany out of all proportion to the military benefit which Great Britain herself would have derived from the repatriation of her own civilians held in Germany. The British Government can hardly be reproached, therefore, for insisting on a system of exchange on a man for man basis. It would seem, however, that the difficulty might have been obviated by a system of parole under which all civilians held by each belligerent could have been released under a pledge not to reënlist in the army or take part in military operations upon their return home. It was quite apparent, however, that the British Government was not prepared to trust so much to German honor.

An arrangement was early reached providing for the exchange of invalids and other persons who were incapable of performing military service, but Germany hesitated whether it should refuse to release retired military and naval officers who were at German health resorts

at the outbreak of the war.²⁵ After a protracted correspondence an agreement was also reached for the reciprocal exchange of such diplomatic and consular representatives as were detained in the two countries.

An arrangement was early made between the British and Austro-Hungarian Governments by which male subjects under the age of seventeen and over fifty, together with physicians, clergymen, invalids, without regard to age, and of course women and children, were reciprocally released. Misc. No. 35 (1916) [Cd. 8352]. The controversy in regard to the age limit of persons capable of military service, which prevented for many months an agreement between the British and German Governments, did not arise between England and Austria-Hungary. It appears that in other respects the policy of the British Government concerning the treatment of Austro-Hungarian nationals in England was marked by exceptional leniency owing to the liberal treatment by the Austro-Hungarian Government of British subjects in that country.^{25a}

The policy of the British Government in the beginning was to interfere as little as the public safety permitted with the liberty of enemy aliens. Only suspects, those likely to prove dangerous in case they were left at large, and persons likely to become a public charge, were arrested and interned. Naturally, in consequence of the excitement and general confusion, many persons were hastily arrested and sent off to concentration camps on unfounded suspicion, only to be subsequently released.²⁶ According to a statement made in the House of Commons by the Prime Minister in May, 1915, about 19,000 Germans and Austro-Hungarians were then interned in various camps, leaving some 40,000 still at liberty.

There was no thought at first of interning the entire enemy alien population, but in consequence of various acts of the Germans, such as the bombardment of West Hartlepool, Scarborough, and Whitby; the dropping of Zeppelin bombs on undefended towns; the use of

²⁵ Correspondence between His Majesty's Government and the United States Ambassador Respecting the Release of Interned Civilians, etc. Misc. No. 8 (1915), [Cd. 7857], pp. 2-3.

^{25a} Compare Williams, "Treatment of Alien Enemies," *Quarterly Review*, Oct., 1915, p. 425; see also Phillipson, *International Law and the Great War*, p. 88.

²⁶ See the London Weekly *Times* of July 4, 9, and 11, 1915.

asphyxiating gases; the reports of ill-treatment of British prisoners, and the like, public opinion in England was gradually aroused, and it was turned to wrath by the sinking of the *Lusitania* in May, 1915. The growing indignation against the Germans manifested itself in various forms, such as the exclusion of persons of German origin from the commercial exchanges,²⁷ the boycotting of German shops, maltreatment of unoffending individuals, and the like. The sinking of the *Lusitania* caused a wave of indignation to sweep over England which was speedily followed by mob outbreaks in various parts of the United Kingdom and in the overseas Dominions, in which many German houses and shops were wrecked or looted. In the east end of London, especially, the damage done by the rioters was very great. In Liverpool the value of property destroyed was estimated at \$2,000,000. In various other places the losses reported were large. In the town of West Ham the riots lasted for several days and the damage done was estimated at a half million dollars. Mr. McKenna stated in the House of Commons that 257 persons, of whom 107 were police or special constables, were injured in the riots at London. In some communities the rioters made no distinction between unnaturalized Germans and British subjects of German origin,²⁸ but proceeded on the assumption that once a German, always a German. Occasionally also native-born British subjects were made the object of attack through mistake, and instances were reported of the destruction of houses belonging to persons of English, Swiss, and Russian nationality, who bore Teutonic names.

In Victoria, British Columbia, the sinking of the *Lusitania* was followed by an outbreak against German establishments, and the city had to be put under martial law. At Johannesburg a series of violent anti-German demonstrations took place, which culminated in the wrecking, wholly or in part, of some fifty German and Austrian houses and the destruction of their contents. The total damage done was estimated to exceed \$1,000,000. At Cape Town, Port Elizabeth, Pretoria, Maritzburg, Kimberley, Bloemfontein, and other places serious disorders took place and considerable damage was done. The occur-

²⁷ *London Times*, May 11, 1915, p. 10.

²⁸ *Ibid.*, May 13, 1915, p. 9.

rence of these outbreaks was deeply deplored by the great majority of the English people, although, in view of the strong provocation occasioned by the barbarities of the German army and navy, they were regarded as the natural manifestations of an outraged public opinion.

In consequence of the intense anti-German feeling throughout the empire, a widespread popular demand was made for the internment of the entire German population, partly in their own interest, since it was impossible to protect them against mob violence so long as they remained scattered or isolated among the English population, and partly in the interest of the national defense, since they constituted a danger to the realm so long as they were left at large. Popular meetings were held in various places at which addresses were made and resolutions adopted calling on the government to adopt vigorous measures. At a meeting at the Mansion House, called "to formulate a protest by the women of Great Britain and Ireland," a resolution was adopted demanding that steps be taken "to free the country from the menace of the alien enemy in our midst."

On the same day a great public demonstration was held in which thousands of the general public are said to have stood in a drenching rain and cheered speeches calling for the internment of the Germans. The following resolution was then adopted:

Thousands of citizens of London, gathered together at a mass meeting, unanimously protest against any kith and kin of German mutilators, poisoners, and murderers of men, women, and children being any longer allowed to be at large in the English islands, and, fearing riots, fires, and spread of disease germs and poisoned water, hereby unanimously demand that the government take immediate steps to intern or deport all alien enemies, male or female, whatever their nationality, naturalized or otherwise.

Deputations from the Stock Exchange, the Baltic Exchange, Lloyds, and the Corn Exchange, after meeting on the steps of the Royal Exchange, marched to the House of Commons and presented a petition to the Attorney General, which called attention to "the grave danger that exists by allowing alien enemies to remain at large in the country."

The popular demand for wholesale internment of the enemy population was so great that the government was compelled to yield, and

on May 13, 1915, the Prime Minister announced that the government had decided upon a measure of general internment. He said:

At this moment some 40,000 unnaturalized aliens, of whom 24,000 are men, are at large in this country. The government proposes that all adult males of this class should, for their own safety and that of the country, be segregated and interned. If over the military age, they should be repatriated. The government recognizes that there may be cases calling for exceptional treatment. Women and children in suitable cases should be repatriated, but there no doubt will be many cases in which justice and humanity will require that they be allowed to remain.

An official body, judicial in character, will be set up to deal with claims for exemption, and as soon as the military and naval authorities have provided the necessary accommodations, those who have not secured exemption will be interned. In the case of naturalized aliens, who in law are British subjects, numbering about 8000, the *prima facie* presumption should be the other way, but exceptional cases established to the satisfaction of the advising body will be specially dealt with. There must be powers of internment in cases of proved necessity or danger.

It will be seen from the Prime Minister's announcement that naturalized British subjects of enemy origin were also to be subjected, in exceptional cases, to internment. In accordance with this announcement, an Order in Council was issued in June empowering the Home Secretary to intern *any person*, when, in view of his "hostile origin or association, it seemed expedient to do so for the public safety." Under this order British subjects of hostile origin or association could be arrested and interned in detention camps without due process of law and without the benefit of the writ of *habeas corpus*, and many were in fact so arrested and imprisoned. There was some protest against the validity of the order,²⁹ but it was sustained by a decision of the Court of Appeal in *Zadig's Case*.³⁰

In accordance with the announcement of the Prime Minister on May 13, practically the entire enemy population, as well as the majority of naturalized British subjects of enemy origin, including also several

²⁹ See the criticism in the *London Solicitors Journal and Weekly Reporter*, Vol. 60, p. 233, and the *London Weekly Times* of July 18, 1916.

³⁰ A. C. 260 (1917). Lord Dunfermline dissented in a long opinion. The *London Times* severely criticized this decision. The decision is also criticized by the *Law Quarterly Review* of July, 1917, p. 205.

thousand friendly aliens, were arrested and sent to concentration camps in various parts of England and in the Isle of Man. It was stated in the House of Commons on December 14, 1915, that the number of enemy aliens then interned amounted to 45,749. Of these, 32,274 were civilians and 13,475 were described as "naval and military men."³¹ Complaint was made in Parliament as late as February, 1917, however, that 4294 enemy aliens, including 287 men of military age, were still uninterned and that Germans were still carrying on business in London.³² Exemptions were granted in exceptional cases, a special internment committee having been appointed to pass upon applications from persons who for one reason or another claimed that they were entitled to be left at liberty.³³ Many persons who were entitled to be repatriated preferred to be interned in concentration camps rather than be sent back to their native country where, in view of their long absence, they would have been virtual strangers and without means of support. Others preferred internment to being left at large in England where they would be exposed to mob outbreaks and maltreatment, against which the local authorities were often powerless to protect them, especially in the case of those who lived in isolated places. So far as possible, work was provided at the camps for those desiring it; tools, materials, and instructors in the handicrafts were furnished, educational

³¹ Sir Herbert Samuel stated in the House of Commons in July, 1916, that at the outbreak of the war there were about 75,000 Germans and Austro-Hungarians living in England. At the time of his statement, all but 22,000, he said, had either been interned or repatriated. Of these, 10,000 were women, 4000 were friendly aliens, and 1500 were aged people, leaving 6500 to whom exemptions had been granted. *London Weekly Times*, July 7, 1916. According to a London press dispatch of November, 1916, there were then 32,000 German civilians interned in England, 23,000 of whom were in the Isle of Man camp.

³² *London Weekly Times*, February 23, 1917.

³³ Sir John Simon, speaking near the end of July, 1915, of the work of this committee, stated that it had received 14,117 applications for exemption from internment. These came mostly from Poles, Czechs, Italians and Alsatians. In view of the somewhat lenient treatment accorded to British subjects by the Austro-Hungarian Government, the committee was disposed to show special consideration to the subjects of that country, and particularly to the above mentioned races, since their sympathies were understood to be more or less on the side of the Entente Allies. Sir John stated that the applications of more than 6000 such persons had been granted, and that most of them had been repatriated. *Solicitors Journal and Weekly Reporter*, July 31, 1915, p. 672.

classes were organized, libraries established, and the like. According to the reports of representatives of the American Embassy who inspected the camps from time to time, the civilian prisoners were well treated and were probably better off than they would have been had they been left scattered over the country, where they would have been exposed to ill-treatment.

Nevertheless, the German Government protested strongly against the policy of wholesale internment as unprecedented, harsh, and unnecessary. In a dispatch of November 8, 1915, to the American Ambassador in London, Mr. Gerard voiced the protest of the German Government. It admitted, he said, the right of the British Government to arrest German subjects who were suspected of espionage, but that great popular resentment had been aroused by the reports of the arrests of other Germans.³⁴ In a White Book issued by the German Foreign Office in 1915,³⁵ the German Government complained of the rigorous treatment to which its nationals in England, France, and Russia had been subjected in respect to their rights of person and property, particularly the closing of the courts, thereby making it impossible for them to enforce their legal rights, the policy of wholesale internment, the sequestration of German property, the attacks of mobs, etc.³⁶ The Austro-Hungarian Government made similar complaints.³⁷

FRENCH POLICY

The problem which confronted the Government of France at the outbreak of the war was, by reason of the large number of enemy aliens in the national territory and the geographical proximity of the country to Germany, even more serious than that which faced the

³⁴ Correspondence between His Majesty's Government and the United States Ambassador Respecting the Release of Interned Civilians. Misc. No. 8 (1915) [Cd. 7857], p. 19.

³⁵ Entitled, *Ausnahmegesetze gegen deutschen Private Recht in England Frankreich und Russland* (Carl Heyman's Verlag, Berlin, 1915), especially pp. 193 ff.

³⁶ The German White Book complained especially of harsh and cruel treatment which Germans in the Cameroons are alleged to have received at the hands of the British.

³⁷ See the Red Book entitled, "Collection of Evidence Respecting Violations of the Law of Nations by the Countries at War with Austria-Hungary."

British Government. In addition to the large number of permanent residents of enemy nationality who had lived in the country for many years and were engaged in business or the practice of professions, there were thousands of German and Austrian tourists who were caught there by the suddenness of the outbreak of the war. The condition in which many found themselves was almost pathetic. Without money, without clothing except such as they wore at the time, with the hotels and lodging houses closed to them, with no place to sleep except in the parks and public squares, thousands, exhausted from long journeys and fruitless searches for lodgings, terrified at the prospect of being arrested as spies, betook themselves to the American Embassy to beg for food, advice, and protection.³⁸ The embassy rendered them assistance in many ways. It gave them information regarding local police regulations; it found lodgings for them in school houses and other public buildings, with the permission of the French Government; and provided them with money to meet temporary and urgent needs.

During the first days of the war there was some wrecking of German shops in certain quarters of Paris, especially of milk depots, some windows were broken and crockery dashed to pieces, and account books scattered in the streets, but the outbreaks were not general or serious.³⁹

On August 2, 1914, when the outbreak of war with Germany was imminent, the French Government gave notice that all foreigners might leave France before the end of the first day of mobilization. On the same day a decree was issued commanding all persons of foreign nationality, without distinction as to age, sex, or nationality, to make known their identity to the *commissariat* of police at the *mairie* or to an administrator at their place of residence. The same decree required all German and Austro-Hungarian subjects to evacuate the region of the

³⁸ Eric Fisher Wood, *The Note Book of an Attaché* pp. 2-8. For a French view of the German spy system in France see an article by Georges Prade in the London Weekly *Times* of May 19, 1916.

³⁹ Wood, *op. cit.*, pp. 6 ff. and 33 ff. There is a deposition in the Austro-Hungarian Red Book, p. 30, which alleges that *all* German and Austrian shops in Paris were wrecked, but I know from personal knowledge that the statement is entirely without foundation.

northwest, as well as a part of the southwest, including also the fortified districts embracing Paris and Lyons, and to retire to certain places in the west where work, if possible, would be provided for them. Eventually they would either be allowed to leave the country or authorized to continue their residence. In the latter event they would be furnished with a *permis de séjour* but would not be allowed to change their places of residence without a safe-conduct establishing their identity.⁴⁰

Natives of Alsace-Lorraine, not naturalized as French citizens but members of families long established in the country, whose origin and sentiments were known, as well as families of which at least one member had enlisted in the Foreign Legion, were allowed to remain with full liberty of action.⁴¹ By a decree of the same date the territories of Belfort and Algeria were declared to be in a state of siege. The measures requiring the evacuation of the regions mentioned were deemed necessary on account of the rapid advance of the German armies and the certainty that those regions would soon become the theater of actual warfare.

By a decree of August 3 the police authorities of the frontier and maritime departments were instructed not to permit any person who was not provided with a passport to leave France, this with a view of preventing French citizens from evading their military duties, and also to prevent the departure of enemy subjects for the purpose of joining the colors of their own country.⁴² Until that date Germans and Austro-Hungarians were free to leave France without restriction, and in spite of the briefness of the period allowed and the difficulties of transportation due to the use of the railways by the French Govern-

⁴⁰ Permits *de séjour* to reside at their homes were granted very sparingly, the recipients being for the most part foreigners who had sons in the French army or old men who had lived in France for many years and whose ties with the fatherland had been broken by long absence. The Minister of the Interior stated in the Senate, on March 23, 1916, that not more than 500 permits of the kind had been issued to enemy aliens in Paris and that the number granted in the provinces was very small.

⁴¹ Text of the decree in Dalloz, *Guerre de 1914*, Vol. I, p. 19; *Législation de la Guerre*, Vol. I, pp. 13-14; Claret, 1915, pp. 95-96; and *Rev. Gén. de Droit Int. Pub.*, 1915, pp. 7-8.

⁴² Valéry, *De la Condition en France des Ressortissants des Puissances Ennemis*, *Rev. Gén. de Droit Int. Pub.*, 1916, p. 356.

ment for mobilization of its armies, a considerable number succeeded in getting away. The greater number, however, either preferred to remain or were compelled to do so on account of the difficulties mentioned. All who remained were from the beginning subjected to a rigorous régime of surveillance for the purpose of preventing espionage and other acts calculated to compromise the national security.⁴³

In consequence of the more serious character of the enemy alien problem in France as compared with that of England, owing mainly to the proximity of France to Germany and the rapid invasion of the country by the Germans, the French Government considered that the public safety did not permit the enemy alien population to be left at large, as was done in England for some eight months after the beginning of the war. In the early days of the war, therefore, the greater part of the enemy alien population, particularly that of Paris, was removed to concentration camps located in various parts of France, mostly in the western departments behind a line extending from Dunkirk to Nice.⁴⁴ The persons so interned were divided into two groups: first, natives of Alsace-Lorraine, Czechs, Greeks, Poles and Armenians; and second, Germans, Austro-Hungarians, Ottomans and Bulgarians. As in England, enemy aliens belonging to the first group were regarded as being the unwilling subjects of their respective governments, whose sympathies were assumed to be largely on the side of the Entente Allies. In consequence they were separated from other interned enemy aliens and allowed a relatively larger degree of freedom, such as the privilege of spending the daytime away from the camps to which

⁴³ Valéry, article cited, p. 359.

⁴⁴ The original order provided for twelve camps, but the number was increased from time to time, until there were fifty-two in the latter part of the year 1915. Clunet, 1916, p. 156. The Minister of the Interior stated, in December, 1915 (*Journal des Débats*, Dec. 12), that the number of German and Austro-Hungarian subjects then interned in concentration camps was about 45,000. He also stated that the number of aliens who had been "chased" from France since the outbreak of the war was 4700; the number of arrests on the charge of espionage was 1125; the number of persons condemned to death by the councils of war was 55; the number condemned to forced labor was 34; to *réclusion* 14; to imprisonment 29. Aside from the condemnations by the councils of war, there were a considerable number of condemnations by the judicial courts.

they were attached.⁴⁵ Those in the second category, however, were allowed no such privileges and were kept under a régime of strict surveillance.⁴⁶

Owing to the fact that the disproportion between the enemy alien populations of Germany and France was less than that between England and Germany, and also because males of military age of both France and Germany were liable to compulsory military service, the difficulties of reaching an agreement in respect to the exchange of certain classes were less serious. As early as October, 1914, therefore, an agreement was reached for the reciprocal repatriation of all males, except those between the ages of sixteen and sixty, and of all women regardless of age. Subsequently a new agreement was entered into for the repatriation of all males under seventeen and over fifty-five and also of males between those ages who were incapacitated for military service by reason of their affliction with any one of twenty specified diseases or infirmities.⁴⁷ A similar agreement was entered into between the French and Austro-Hungarian Governments.⁴⁸

In France, as in the other belligerent countries, popular hostility towards the enemy manifested itself in a variety of forms. Generally in all of them persons of enemy nationality were deprived of all titles, honors, or dignities which had been conferred upon them by the governments with which they were at war, and even scientists were expelled

⁴⁵ Enemy aliens of this class were accorded specially favorable treatment in other respects. Thus, they were allowed the benefit of the *moratorium* and were granted permits *de séjour* more freely than were other enemy aliens. Moreover, the measures in respect to sequestration were enforced against them with less rigor. In these respects, also, Bulgarians and Ottomans not actively hostile appear to have been treated with more liberality than were Germans and Austro-Hungarians. See Clunet, 1915, p. 1091; and 1916, pp. 267 and 1634.

⁴⁶ Valéry, p. 362. Regarding the special leniency accorded to enemy aliens in the first group, see also Clunet, 1915, pp. 1091-3, and 1916, pp. 267, 814-16 and 1634. Conditions in a typical concentration camp (Château roux Bitry) are detailed in Clunet, 1916, pp. 473 ff.

⁴⁷ It was announced in the press dispatches from Berlin on Nov. 24, 1916, that some 20,000 German civilians then interned in France would in accordance with this agreement be released and allowed to return to Germany. The number of Frenchmen in Germany who were repatriated in pursuance of the arrangement was, however, considerably smaller.

⁴⁸ Text in Clunet, 1916, p. 515.

from academies and learned societies. By a French decree of November 17, 1914, all German subjects (except residents of Alsace-Lorraine who were of French origin) who had received appointments in the Legion of Honor were dismissed as an act of reprisal against the Germans for various acts of barbarity and especially for their destruction of historic monuments.⁴⁹ As an answer to the manifesto of the ninety-three German intellectuals, most of the French academies and learned societies expelled members who were the subjects of enemy Powers.

As in England, the hostility to Germans and Austro-Hungarians was not confined to those who were subjects of an enemy Power, but it was extended to persons of enemy origin who had been naturalized in France. Although the policy of denationalization was not resorted to in England (there was, however, considerable popular demand for it), in fact naturalized British subjects of enemy origin were interned, as has been stated, and otherwise subjected to the same restrictions and disabilities as those imposed upon enemy subjects. France went further, and by an Act of Parliament of April 7, 1915, provided for the denationalization of naturalized French citizens born in enemy countries.⁵⁰ The measure was made compulsory in the case of those who had borne arms against France or who had left French territory to escape military service or who had directly or indirectly given aid to the enemy. All naturalization certificates granted to the subjects of enemy countries since January 1, 1913, were to be revoked. The Minister of Justice was required to make known within three months the names of all other naturalized Frenchmen who in his judgment were deemed worthy of retaining their French nationality. The certificates of all others were to be withdrawn and the denationalization to be considered as having taken effect from the date of the outbreak of the war, without prejudice to the rights of third parties.⁵¹

⁴⁹ Text in *Législation de la Guerre*, Vol. I, p. 206, and *Rev. Gén.*, 1915, Docs. p. 38.

⁵⁰ Inhabitants of Alsace-Lorraine who were French citizens prior to 1871, or descendants of such persons, were excepted.

⁵¹ *Législation de la Guerre*, Vol. II, p. 101; Dalloz, Vol. IV, p. 114.

GERMAN POLICY

Aside from the refusal of the German Government to allow any days of grace during which enemy aliens might leave, such as were allowed in England and France, the general policy of the German Government was less drastic in the beginning than that of either the British or French Governments, for there the problem was less serious owing to the relatively small number of enemy aliens and the absence of any such extensive system of espionage as existed in England and France. Strong complaints, however, were made in England of the harsh treatment to which British subjects, especially invalids at Nauheim, Carlsbad, and other places were subjected, and of the imprisonment of others.⁶² Both British and French nationals are said to have been summarily expelled from various cities, without distinction as to age or sex, and without being allowed to take their baggage with them. For a time no general legislative or administrative measures affecting enemy aliens were adopted. They were allowed access to the courts (unless domiciled abroad), their property and business enterprises were not put under sequestration, and there was no wholesale internment of the enemy alien population in concentration camps. Very soon, however, in consequence of reports reaching Germany that large numbers of Germans were being arbitrarily arrested and im-

⁶² Satow, *Treatment of Enemy Aliens*, Publications of Grotius Society, Vol. II, p. 8. Serious charges were also made by the French Government against the German authorities for the rough and brutal treatment to which its consuls at Mannheim, Düsseldorf, Stuttgart, and other places were subjected. See the reports made by these consuls to their government, *Rev. Gén. de Droit Int. Pub.*, July-Oct., 1915, Docs. pp. 62-64 and pp. 72-73.

The Russian Government also complained of various brutalities to which its nationals in Germany were subjected. See text of a circular communicated to the press by the Russian Embassy at Paris on Jan. 13, 1915, *Rev. Gén. de Droit Int. Pub.*, July-Oct., 1915, Docs. pp. 105-109. Ambassador Gerard says all Japanese in Germany were immediately imprisoned upon the outbreak of war between the two countries. Popular hostility toward Japanese residents, he says, was very strong. No restaurant in Berlin would admit them and they had to be supplied with food by the American Embassy. When Mr. Gerard finally obtained permission for them to leave Germany, he had to send an escort with them to the Swiss frontier to protect them against attack. Gerard, *My Four Years in Germany*, Philadelphia *Public Ledger*, Sept. 9, 1917, p. 1.

prisoned in England and that the entire German population had been compelled to evacuate certain regions of France, the German Government proceeded to adopt retaliatory measures. In a dispatch of November 8, 1914, to Mr. Page,⁵³ Mr. Gerard stated that the German Government did not question the right of the British Government to arrest German subjects suspected of espionage, but that "great popular resentment has been created by the reports of the arrests of other Germans, and the German authorities could not explain or understand why German travelers who have been taken from ocean steamers should not be permitted to remain at liberty." Up to the 6th of November, the dispatch stated, considerable liberty of movement had been allowed to British subjects in Germany, and they had been allowed to carry on their business without serious interference. There appear to have been no serious outbreaks against British or French nationals in Germany and no wrecking of shops or other property.

On the latter date an order was issued by the German Government for the general internment of all British males between the ages of seventeen and fifty-five.⁵⁴ This order, it was added, "was occasioned by the pressure of public opinion, which had been still further excited by the newspaper reports of a considerable number of deaths in the concentration camps."⁵⁵ As in England and France, civilian prisoners were segregated and confined in specially improvised concentration camps, most of the British being housed in the buildings of a race course at Ruheleben near Berlin. There were, of course, the usual complaints of harsh treatment of prisoners in the German concentration

⁵³ Misc. No. 8 (1915), [Cd. 7857], p. 19.

⁵⁴ Regarding the legal status of interned civilians in Germany, the *Reichsgericht* held, in August, 1915, that they were not prisoners of war in the sense in which the term is used in the Hague Convention. They were not, therefore, liable to trial by a military tribunal. Text in Clunet, 1917, pp. 257 ff.

⁵⁵ Americans in Germany have not as yet been interned. According to an official announcement from Berlin on April 14, 1917, they were to be treated along the same lines as laid down in President Wilson's proclamation concerning the treatment of Germans in the United States. They appear to have been allowed substantially the same freedom of movement and business activity as was allowed neutral persons, except as to residence in fortified places. According to a press dispatch of April 24, 1917, however, American newspaper correspondents were notified that their presence was no longer "desirable," and they accordingly transferred their residences to neutral countries.

camps, and some of them were undoubtedly well founded.⁵⁶ The second report of the French commission of inquiry, appointed to make inquiries concerning the treatment of civil prisoners, charges that about 10,000 French men, women, and children were "carried off into the enemy's land and kept in captivity" in concentration camps, where they were insufficiently fed, subjected to the most humiliating punishments, and compelled to perform the most painful and degrading tasks. In pursuance of the exchange agreement referred to above, a large number of French civilian prisoners were repatriated, and it was on the basis of their testimony that the charges of the French commission were made.

The Russian Government also complained of the harsh and brutal treatment which Russian men, women, and children are alleged to have received at the hands of the German authorities. They were, it was charged, rounded up, carried away in dirty cattle trucks, confined in stables and pigsties, compelled to march with their hands tied behind them, and otherwise maltreated. All Russian males between the ages of eighteen and fifty were arrested as prisoners of war and were forbidden to take their effects with them to the prison camps.⁵⁷

⁵⁶ For an elaborate description of life in the Ruheleben Prison camp and the treatment received by the prisoners, see the remarkable book of Israel Cohen entitled, *The Ruheleben Prison Camp* (New York, 1917). The author was a prisoner in the camp for nineteen months. For the first two years of the war between 4000 and 5000 British subjects were confined in this camp. The number was reduced to some 3000 in 1917 in consequence of the exchange arrangement referred to above. See also the report of an investigation into the conditions of this camp by representatives of the American Embassy in a British White Paper, Misc. No. 3 (1915), [Cd. 8161].

⁵⁷ These and other charges are contained in a report issued by the Russian Government, the text of which may be found in the *Rev. Gén. de Droit. Int. Pub.*, July-Oct., 1915, Docs. pp. 105-109. See also Coleman Phillipson, *International Law and the Great War*, p. 89.

In December, 1917, an arrangement was entered into between the German and Russian Governments, through the medium of the American Minister at Stockholm and the American Ambassador at Petrograd, for the reciprocal repatriation of all women, children, and men over forty-five years of age held as civilian prisoners in both countries. It was stated that the agreement embraced about 100,000 Germans in Russia, although the number of Russians in Germany affected was inconsiderable.

AUSTRO-HUNGARIAN POLICY

Although the Austro-Hungarian Government, like that of Germany, did not accord a period of grace during which enemy aliens might leave, its policy in other respects appears to have been especially lenient.

Eric Fisher Wood, who spent some time in Austria and Hungary in the service of the American Embassy, states that the Hungarian Government did not molest alien enemies at all and that there was no wholesale internment of enemy subjects in concentration camps. British horse trainers and French governesses, he says, went tranquilly about their peaceful occupations, and English tailors advertised their services in the newspapers; their clients patronized them as formerly, and French *chefs* continued to hold their positions as before the war. This lenient treatment was accorded in spite of the fact that Hungarians had been interned by the French Government.⁵⁸

By an imperial ordinance of October 16, 1914, the Austro-Hungarian Government was authorized to take, by way of reprisal, such measures against foreigners and foreign establishments as might be necessary to prevent the furnishing of supplies to the enemy.⁵⁹ Early in the war an arrangement was entered into with the Austro-Hungarian Government by the Governments of Great Britain and France for the reciprocal repatriation of women and children, males under the age of seventeen and over fifty, and males between those ages who by reason of certain infirmities or diseases were incapacitated for military service.

⁵⁸ Notebook of an Attaché, p. 284. There is reason to believe, however, that the policy of the Austro-Hungarian Government toward Italians was much less liberal, partly, no doubt, because the very large number of Italians in Austria-Hungary, especially in the region which became the theater of hostilities, made the problem of their treatment a more serious one. The Italian Government complained that some 30,000 of its nationals were expelled from Trieste, Gorizia, and Gradisca, none of whom were allowed to return to Italy. They were, instead, loaded on freight cars, it is charged, deported to the interior, and interned in concentration camps, without distinction as to age or sex.

⁵⁹ Text in Reulos, *Manuel des Sequestrés*, pp. 444-5, and Clunet, 1916, p. 357.

STATUS OF GERMANS IN ITALY

Legally, Germans in Italy and Italians in Germany were in a situation different from that of enemy aliens in any other country at the outbreak of war. This was due to the fact that on May 21, 1915, three days before Italy declared war against Germany, the two governments, in the full expectation of the early outbreak of hostilities, concluded a special agreement concerning the treatment which each engaged to accord the subjects of the other who should be found in its territories in the event of war.⁶⁰ The treaty provided for a mutual guarantee in respect to the persons and property of the subjects of each party in the territory of the other. They were to be allowed to continue their residence without molestation, except that they might be required to reside in designated localities and subjected to police measures in case the public safety and order should require. The right of departure from the country was allowed; they were to be subject to no restrictions different from those imposed on neutral persons sojourning in the country; there was to be no sequestration of property, no confiscation of patent or other rights of this character, and no abrogation or suspension of contracts or debts.

No such treaty having been entered into between Italy and Austria-Hungary, a somewhat anomalous situation was thus created. The Italian Government had adopted rather stringent measures in its treatment of Austro-Hungarian subjects, but in virtue of the above-mentioned agreement it could not apply the same measures to German subjects.⁶¹ The favored treatment thus enjoyed by Germans as compared with that to which Austrians and Hungarians were subjected was the subject of considerable criticism, and the Bar of Milan adopted a resolution expressing the opinion that no distinction should be made between Germans and Austro-Hungarians in respect to their treatment. This view was strengthened by the alleged violation by the German Government of the Italo-Germanic agreement. It was alleged that while the Italian courts were open to Germans, the German decree of

⁶⁰ Text in Clunet, 1916, pp. 407-408.

⁶¹ Valéry, *Condition des Allemands en Italie Postérieurement à la Déclaration de Guerre à l'Autriche*, Clunet, 1916, pp. 405-415.

August 7, 1914, closing the German courts to enemy aliens domiciled outside Germany, applied to *all* enemy aliens, no exception being made in the case of Italians, as the spirit of the treaty required. Moreover, it was alleged that bankers of Berlin refused to make payments to Italian creditors, and by a decree of July, 1916, Governor General Von Bissing of Belgium subjected Italians in that country to a régime of surveillance. Finally, the German Government refused to pay pensions due to Italian laborers under the German workingmen's pension laws, notwithstanding the stipulations in the treaty of May 21 that contracts would not be impaired or abrogated.⁶²

In short, Germany had treated the agreement of May 21 as a "scrap of paper." Notwithstanding the popular opposition to the special régime which the treaty established in behalf of the Germans in Italy and the alleged refusal of the German Government to abide by its stipulations, it does not appear that the Italian Government yielded to the popular demand by placing Germans and Austro-Hungarians on the same footing.⁶³

THE PORTUGUESE MEASURE OF EXPULSION

Portugal appears to have been the only country which resorted to the policy of wholesale expulsion. By a decree of April 20, 1916, all German subjects of both sexes, except males between the ages of sixteen and forty-five years, were ordered to leave the country within fifteen days. The latter were interned in a concentration camp on the Island of Terceira. Persons born in Portugal of German fathers were also treated as enemy subjects. Violation of the decree of expulsion was punishable by three years' imprisonment in a fortress in case of men, and two years' correctional imprisonment in case of women.⁶⁴

⁶² Valéry, *La Condition Juridique des Allemands en Italie depuis la Déclaration de Guerre à l'Autriche jusqu'à la Déclaration de Guerre à l'Allemagne et postérieurement à celle-ci*, Clunet, 1917, pp. 69 ff.

⁶³ In consequence of the alleged refusal of the German Government to allow Italians access to the German courts, the Bar of Milan addressed a circular to the Bar of the rest of Italy expressing the opinion that it was the duty of all Italian lawyers to refrain from taking cases in which Germans were plaintiffs. Text of the circular in Clunet, 1916, pp. 413 ff.

⁶⁴ Text of the decree in Clunet, 1916, pp. 1424 ff.; see also *ibid.*, pp. 1074 and 1468.

JAPANESE POLICY

The Japanese treatment of enemy aliens is said to have been exceptionally liberal. Although all Japanese subjects in Germany were arrested at the outbreak of war between the two countries and were treated with great indignity, the Japanese Government did not resort to such measures, but treated Germans as it did foreigners of neutral nationality. There were no outbreaks against Germans and no manifestations of hostility. Not even German teachers or tutors were discharged. No restrictions were placed upon their freedom of movement, and even German reservists were allowed to return to Germany on Japanese ships. German business men continued their business as before the war, without molestation or restriction, and agents of German houses regularly furnished their Japanese customers with goods.⁶⁵

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⁶⁵ Clunet, 1916, pp. 1712 ff.

English and French subjects in Japan are said to have protested against the exceptional liberality with which the Germans were treated, but the Japanese Government does not appear to have modified its policy.

JUS GENTIUM AND INTERNATIONAL LAW

At the present moment, when the very existence of international law as a practical element in the conduct of human affairs is doubted or derided by many and when such precepts as are claimed to be fundamental in that law itself are daily set at nought by belligerents in the world conflict, it has been thought that a brief outline of the earliest conceptions characterizing international jurisprudence will prove neither useless nor unwelcome.

The term "International Law" has, in the usage of our day, quite superseded the earlier expression "law of nations," long since adopted as a translation of the Latin phrase *jus gentium*. The expression "International Law," however, so familiar to us, properly denotes a wholly variant conception. In modern days it is used by the celebrated D'Aguesseau and occurs in Volume II of his works, page 337 in the edition of 1773; it is shortly afterward employed by Bentham in his "Principles of Morals and Legislation" (XVII, 326, n. 1), and has since his time come into general use. D'Aguesseau's expression (*droit entre les gens*) is doubtless, in its turn, an adaptation from Zouche, Professor of Civil Law at Oxford, who uses, about 1650, the term *jus inter gentes* in harmony with the thought of Grotius as expressed in the opening paragraph of the Prolegomena to his *De Jure Belli Ac Pacis*, where Grotius explains at the outset the intended subject of his great treatise, — *at jus illud quod inter populos plures aut populorum rectores intercedit, sire ab ipsa natura profectum, aut divinis constitutum legibus, sine moribus et pacto tacito introductum, attigerunt pauci, universim ac certo ordine tractavit hactenus nemo; cum tamen id fieri intersit humani generis.*

We note here, to return to the point later, that Grotius' mind is fixed on a *jus inter populos plures* rather than a *jus gentium*, — a law valid *between* nations, not a law *of* nations. Hence when speaking in a subsequent passage (I, 1, 14) of law in its various aspects, he tells

us, after characterizing the civil law of a state, — *latius autem patens est jus gentium; id est quod gentium omnium aut multarum voluntate vim obligandi accepit, multarum addidi, quia vix ullum reperitur extra jus naturale, quod ipsum quoque gentium dici solet, omnibus gentibus commune.* (Cf. sections X–XVI with the quotations.)

In these important passages Grotius accurately distinguishes *jus civile*, *jus gentium*, and *jus naturale*, — that is to say, civil law, a law of nations, and a natural law, and he declares, too, that *jus gentium* is evidenced in the same manner as *jus non scriptum civile* (customary law): *probatur autem hoc jus gentium pari modo quo jus non scriptum civile, usu continuo et testimonio peritorum* (1, 1, XIV 2). What then is the historical development of *jus gentium*?

The term seems first to occur in European literature in Cicero's writings and to have been adopted by him from purely speculative aspects of Greek philosophic thought, which had developed long prior to his time the conception of a law eternal and controlling, existing independently of human permission or enactment. It is the unwritten law evidenced by custom or the conscience of mankind; the law common to all men clearly distinguished by Aristotle (*Ethics*, 8, 13, 5) as justice unwritten, ἀγραφος. In his treatise on the laws, Cicero, accordingly, declares: *Est enim unum ius, quo devincta est hominum societas et quod lex constituit una. Quae lex est recta ratio imperandi atque prohibendi* (*De Legg.* I, xv, 42): and in his treatise on the commonwealth he says: *Unde enim pietas? aut a quibus religio? unde ius aut gentium, aut hoc ipsum civile quod dicitur? unde justitia, fides, aequitas?* (*De Republica*, 1, 2.)

Similarly, in the Oratorical Partitions (XXXVII), he speaks of the law, written and unwritten, again referring to the *jus gentium*: *quae sine litteris aut gentium jure aut maiorum more retinentur.*

In these two latter passages, however, Cicero, familiar in actual practice at the Roman Bar with practical legal thought and usage as well as with the philosophic speculations so dear to his own leisure, is probably speaking of something quite different from the Greek law of nature. He is referring rather to a system of *praetorian jurisprudence* which had slowly grown up, doubtless through many centuries, as a consequence of the actual necessities of Roman legal life, in whose

commercial transactions the old *actiones* of the strict civil law of the city had long failed to meet the demands of modern commerce, both among the citizens proper as well as amid the throngs of aliens (*peregrini*) who in ever-increasing numbers invaded Rome from Italy and more distant lands as well.

Precisely what force Ciceró intended to attach to the expression *jure gentium* in this passage may be difficult to determine, but it is more than probable that his practical legal experience would lead him to regard the slowly formed and long familiar *praetorian* system of law in the light of the universality which, as above noted, he attached to the philosophic conception derived by him from Greece. As we shall see in a moment, there were other significations which might be attached to the expression as found a few years later in Livy and other authors, but for our purposes it may be safely assumed that the great jurisconsult and philosopher was thinking of the many modifications of the ancient and rigid Roman forms of action which had been developed by judicial usage in the interests of even-handed justice. That this is the correct view also seems quite certain when we have regard to the meaning attached to the term *jus gentium* as employed by the jurists of the second and succeeding centuries A.D. Thus used, it is synonymous with a modification of the *jus civile*. What, then, was this modification? Pomponius, writing late in the second century A.D., tells us in his celebrated account of the ancient Roman constitution (Digest, 1, 2, 1-47) that a *praetorian* office was created when the consuls were called away by war, the magistrate being designated *praetor urbanus*; he adds that later a second *praetor* was appointed by reason of the many *peregrini* who had congregated in Rome (Digest, 1, 2, 27, 28). By this term *peregrini* we are to understand all persons in Rome who were other than Roman citizens in the strict sense of the word. The first *praetor* to fill this office, Pomponius tells us, was called *city praetor*, since his judicial activities lay within the city (*in urbe jus redderet*); the second *praetor* was called *peregrinus*, since, adds Pomponius, his jurisdiction was concerned chiefly with other than Romans (*quod plerumque inter peregrinos jus dicebat*).

We learn from various sources, nevertheless, that both these jurisdictions were at times administered by a single magistrate, the other

being sent abroad in command of an army or in charge of a provincial administration. The number of these magistrates, too, was gradually increased, but there seems to be no proof that the system of law which they administered was different nor that the terms "city" and "foreign" *praetor* were intended to convey the impression that the one jurisdiction concerned Roman citizens exclusively, while the other comprised suits in which aliens or aliens and Romans only were engaged, and engaged, furthermore, in a differing system of jurisprudence from the ancient civil law applicable only to actions between Romans. In fact the marvelous influx of persons other than Romans did not create distinctively jural needs, but rather emphasized needs already found to have existed in a growing community where the originally simple forms of commercial intercourse necessitated an appeal to equitable principles (*bona fides*) as opposed to the stricter forms of a code derived from primitive days. Thus, to meet the requirements in actions between Roman citizens inevitably arising through sale (*emptio venditio*), letting and hiring (*locatio conductio*), partnership (*societas*), agency (*mandatum*), etc., it would become essential for the magistrate to shape the course of an *actio* upon principles suggestive of fair dealing (*ex bona fide*) and in forms suited to each occasion as it arose; and such a procedure must have been found indispensable between Roman citizens from earliest times. The process, in short, would be a slow crystallization of Roman legal custom; and when, subsequent to the first appointment of a *city praetor*, it was found necessary to institute a second, it was doubtless perceived that the *formulae ex bona fide* were in striking agreement with rules of action derived from similar needs found to exist among peoples wholly alien to Rome. There were thus increasingly in evidence two legal systems: the one being a continuation of the narrow and inflexible *jus civile*, and the other a *praetorian* equity derived through the granting of actions by authority of the *praetorian imperium* and in harmony with the needs of an expanding commercial center. The first and ancient system would still be known as *jus civile*, while the second, borrowing an appellation created by an apprehension of the necessary universality of conceptions based on justice and good faith, would be termed *jus gentium* — the law common to all peoples, the law universal. It is to be especially

emphasized, however, that this *jus gentium* was developed from Roman usage among Romans and did not have its rise, as many jurists have thought, when the *praetor*, confronted with increasing alien affairs, found himself obliged to draw inspiration from foreign fountains, although it seems probable that the presence of Greek merchants might have led to the direct adoption in the *praetorian* system of a distinctively Grecian conception of juristic principles. *Jus gentium* is thus seen as a creature of primitive barter and industry; its prescriptions are in force, nevertheless, on strictly legal lines, — *actiones in jus conceptae*, — to be carefully distinguished from the original forms fixed by Roman legal tradition.

Slowly, with the progress of time, the newer or *praetorian* system gained ground amid the ordinary legal contests of commercial life. Of course it should not be forgotten that it was not every class of aliens (*peregrini*) who were excluded from the strict actions of the ancient system, since by treaty Rome received many peoples into the benefits of the *commercium* and of the arbitral system enforced through *recuperatores*.

In the sixth century of the city *peregrini* seem to have been admitted to the benefit of some ancient actions, and in the long run even the regulations and forms of the *jus gentium* must have become modified through the penetrative influence of foreign jurisprudence. When Caracalla granted Roman citizenship to all within the empire, the distinctions of the two systems would tend to disappear, while the constant influence on Roman legal thought of juristic conceptions once wholly foreign would not only modify Roman law itself but would facilitate its spread throughout the world.

We are, then, to understand by the term *jus gentium*, in the light of the facts enumerated, a system of law gradually arising through the efforts of the Roman *praetor* to promote a sense of equity and fair dealing by so modifying the *jus civile* as to allow a broader practice in granting forms of action than had been possible under the stricter ancient law, for it must not be forgotten that ancient Roman jurisprudence realized itself most strikingly in the theory of formal *actions*. It was the privilege of the *praetorian* office through the exercise, as has been already indicated, of the *imperium*, to modify ancient rigidity

by granting actions *bona fide* in the cases we have already mentioned as well as others, of all of which Gaius gives us a careful enumeration in the passage (IV, 62) beginning: *sunt autem bonae fidei iudicia haec; et empto vendito, locato conducto, negotiorum gestorum, mandati, depositae*, etc.

In the next generation and in the pages of Livy we find the term *jus gentium* employed with significations of quite a different character from those familiar to the law courts. With Livy the term is more consonant to a description of public than of private affairs; for example (IV, 1, 2), when speaking of the reluctance of the patricians to entertain the project proposed by Canuleius of granting the *jus conubium* to the plebeians, he makes the patricians allude to the privileges of their order as the rights of the ancient *gentes*, — *jura gentium*. But for the most part Livy recognizes in our term *jus gentium* the conduct of embassies, the declaring of war, or conclusion of peace, as well as treaties.

The terms *jus belli* or *jus belli et pacis*, the law of war and peace, is also a familiar expression to him. Thus, in the instance of the traitorous Tarquinian ambassadors (II, 2, 7), he represents the immunity given by *jus gentium* as saving the envoys from punishment well merited by their treachery. Again (II, 12, 14) Porsenna spares Mucius really by reason of his bravery and devotion to Rome, though Livy makes Porsenna declare that he frees him by the custom of peoples or law of nations (*jure belli liberum te intactum inviolatumque hinc dimitto*). Again, when describing the celebrated incident at the Caudine Forks, Livy makes Postumius attempt a fictitious injury to the herald in order that war may be again declared between Rome and Samnium; and Postumius is made to declare, *illum legatum fetialem a se contra ius gentium violatum*.

Many other instances might be cited, but enough, we think, has been said to indicate the clear apprehension in the Roman mind of a system of at least formal international principles which tended to safeguard envoys and imposed upon nations certain formalities in the declaration of war or conclusion of peace. Such ceremonies were in the special charge of the *collegium* of *fetiales*, whose members exercised both priestly and diplomatic functions.

To this system the terms *jus belli* and *jus gentium* were readily applied. They are picturesquely described by Livy (I, 32). There was in them beyond doubt a suggestion of the universal, and this certainly constituted at least a foreshadowing of what we now term international law. In any event, as many passages in Livy and not a few in contemporary Roman authors well indicate, the phrase *jus gentium* connoted in the thought of the early empire a usage *between* peoples based on a clear apprehension of fundamental moral principles; nor is this supposition invalidated through the savage war usages so prevalent both in the early and later history of Rome. In fact, it is perhaps not too much to suppose that had Rome not won universal empire, the ancient world might well have witnessed the development of a rational system of international intercourse springing from clearly defined legal principles. Hence it was that the celebrated Isidore, Archbishop of Seville, in a famous passage of his encyclopædic work (*Origines*), alludes to the *jus naturale* as basis of a *jus civile* and a *jus gentium*, having, perhaps, in mind both of the systems to which the Romans applied this term and which we have noticed above.

It was not, however, until the period of the general awakening of the sixteenth century, signalized in legal literature by a series of works on the laws of war and diplomacy, that we find a conception not of a system of law binding individuals of different nationalities in their private rights, but rather aimed in the first instance at softening the rigors of war and upon this path arriving at outlines of a system of interstate relations governing peoples as such. We first find such a conception in the work of Ferdinand Velasquez, who died in 1566 at the age of fifty-five. His book was published at Venice in 1564, and found an echo in the work *De Jure et Officiis Bellicis* of Ayala, Judge Advocate of Spain in the Netherlands, who wrote apparently during actual experience of camp life and with a wide knowledge of Roman and Canon law. His successor in point of time was Albericus Gentilis, an Italian who found a home and professional vocation in Oxford, and who exhibited, in the famous work which to some extent inspired Grotius, every evidence of classical scholarship and a profound moral sense as well. The experience of Gentilis was of such varied character that his works (*Jus Legationis* and *De Jure Belli*)

may be said to have been in some part the legitimate products of wide participation in diplomacy and practical legal affairs. As an adviser of the English Court, Gentilis obtained a great reputation, and his works, familiar to every student of international law, may be readily classed among those which will not die.

We have noted at the outset that Grotius sat down to write his masterpiece in a spirit which sought to propound the first principles of a law between nations, as distinct from those of a system of jurisprudence governing courts when dealing with citizens in their private affairs; but he also endeavored to posit such a foundation in the moral consciousness of man. He looks at a system of law governing nations in their mutual intercourse, therefore, in the light of universal concepts drawn from the ancient ideas of an unwritten law of right reason combined with a system striving to develop the sense of equality and fairness in the personal dealings of men. It was in this manner that the true *jus gentium*, as well as the unwritten law of Cicero's thought, united in the greatest writer upon international law to found a science which cannot easily yield its place to any theories of the conduct of war or peace which shall sanction modes of international intercourse not in consonance with humanity and civilization. The atrocious doctrine of war necessity, the traitorous ambassador, must, in the future development of international relations, disappear. If the world is to be settled at all in the enjoyment of a definite system of international right, it must be settled in the light of such principles as these, principles which trace their inception and development far beyond definitely known periods of European history and are in fact as ancient as civilization itself.¹

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¹ Authorities: *Agraphos Nomos*, R. Hirzel; *Peregrinenrecht und Jus Gentium*, J. Baron; *Römische Rechtsgeschichte*, 1, 450 seq., Karlowa; *Les Institutions Juridiques des Romains*, E. Cuq., 1, 457 seq.; *Le Droit des Gens dans les Rapports de Rome avec les Peuples de l'Antiquité*, M. Chauveau; Mommsen, *Römisches Staatsrecht*, 2, 1, p. 185 seq.; Clark, *Practical Jurisprudence*.

TREATIES AND THE CONSTITUTIONAL SEPARATION OF POWERS IN THE UNITED STATES

THE Constitution wholeheartedly accepted Montesquieu's theory¹ of the separation of the powers of government into three departments, and the courts have maintained as a fundamental principle of constitutional law that no department shall exercise powers properly belonging to either of the others.² The treaty-making power is established in Article II of the Constitution dealing with the executive, and consequently treaty-making has been ordinarily considered one power of the executive department. It is, however, stated that "the executive power shall be vested in a President of the United States of America,"³ whereas the treaty-making power is vested in the President acting "by and with the advice and consent of the Senate — provided two-thirds of the senators present concur."⁴ Furthermore "treaties made . . . under the authority of the United States" are "the supreme law of the land."⁵ Thus, both by composition and function the treaty-making power appears to be fully as much legislative as executive, a situation emphasized by Hamilton in the *Federalist*.⁶

¹ Montesquieu, *L'Esprit des Loïs*, liv. xi, c. 6. See also Garner, Introduction to Political Science, New York, 1910, pp. 406 *et seq.*

² *Kilbourne v. Thompson*, 103 U. S. 188; *Interstate Commerce Commission v. Brimson*, 154 U. S. 447. The principle is implied from the first section of the first three articles of the Constitution. See also Farrand, Records of the Federal Convention, 2: 56, 77; the *Federalist*, Nos. 47, 48; J. P. Hall, Constitutional Law, Chicago, 1910, p. 16.

³ Art. 2, sec. 1, cl. 1.

⁴ Art. 2, sec. 2, cl. 2. Executive participation in treaty-making was an afterthought. The treaty power under the Articles of Confederation was vested in Congress (Art. 9). In the first draft of the Constitution prepared by the Federal Convention, the treaty power was vested in the Senate alone (Report of Committee on Detail, Aug. 6, 1787, Art. 9; Farrand, Records of the Federal Convention, 2: 183), and proposals were made to vest it in Congress (Farrand, 2: 297, 392, 538).

⁵ Art. 6, sec. 2.

⁶ The *Federalist*, No. 75. The treaty power is really neither executive nor legislative, since its ends transcend the domestic purposes of ordinary legislation as

Regarding the treaty-making power as a distinct department of government, the question of constitutionality might arise, in case it attempted to perform or delegate functions assigned by the Constitution to another department.

TREATY POWER AND LEGISLATIVE POWER

The Constitution states that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."⁷ But as treaties are made the supreme law of the land, it is clear that some legislative authority is vested in the treaty-making power.⁸ A treaty could scarcely be regarded as a usurpation of the powers of Congress and unconstitutional simply because it was legislative. To so regard it would destroy the meaning of the phrase in Article VI. Question could only arise in case the treaty concerned matters specifically assigned by the Constitution to Congress.

1. The Constitution provides that "no money shall be drawn from the treasury, but in consequence of appropriations made by law."⁹ In accord with the resolutions¹⁰ adopted by Congress after the extensive much as its means, characterized by the contraction of permanent obligations of general effect, differ from the methods of ordinary execution and administration. John Locke divided the departments of government into legislative, executive, and *federative*, attributing to the latter the function of dealing with foreign nations. The "federative" thus corresponds to the treaty-making power and is distinguished from the executive or power of law enforcement and administration. (Locke, *Two Treatises of Government*, c. xii, secs. 143, 144, 146.) A combination of the classifications of Locke and Montesquieu suggests a fourfold classification of departments of government into legislative, judicial, executive, and federative. See also E. Root, this *JOURNAL*, 1: 278.

⁷ Art. 1, sec. 1, cl. 1.

⁸ The inconsistency was seen by some members of the Federal Convention who thought that treaties should not become "law" "till ratified by legislative authority." (Farrand, 2: 297, 392, 538.) See also remarks by Gallatin in debate on the Jay Treaty, 1796, *Annals*, 4th Cong., 1st sess., p. 464. Some legislative power has also been vested in American ministers in countries where the United States enjoys extraterritorial jurisdiction. They exercise a limited power to legislate for citizens of the United States, even in criminal matters. (Rev. Stat., sec. 4086; Cushing, Att. Gen., 1855, 7 Op. 495, 504; Moore, 2: 617.)

⁹ Art. 1, sec. 9, cl. 7.

¹⁰ This resolution, which was largely the work of Madison, agreed that the

debate on the Jay Treaty of 1794, this was interpreted during the administrations of Jefferson and Madison as rendering it beyond the competence of the treaty power alone to conclude a treaty requiring an appropriation.¹¹ In deference to this opinion Congress has sometimes been requested to make a provisional appropriation before ratification of the treaty,¹² and the treaty itself has sometimes stated that its effectiveness is dependent upon action by Congress.¹³

The weight of practice¹⁴ and authority,¹⁵ however, indicates that

authority to make treaties was vested solely in the President and Senate, "but when a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution as to such stipulations on a law or laws to be passed by Congress; and it is the constitutional right and duty of the House of Representatives in all such cases to deliberate on the expediency or inexpediency of carrying such treaty into effect and to determine and act thereon, as in their judgment may be most conducive to the public good." *Annals*, 4th Cong., 1st sess., p. 771. The resolution was affirmed without debate in 1871. *Cong. Globe*, 42d Cong., 1st sess., 835; *Wharton*, 2: 19.

¹¹ "Mr. Madison's resolution of the year 1796, which asserts the abstract right of the House of Representatives, was adopted by a majority of the House, and remains, unrepealed of record on its journal, and it cannot be denied that during the sixteen years of the administrations of Presidents Jefferson and Madison that was the avowed construction of the Constitution by the Government of the United States." *Mr. Gallatin to Mr. Everett*, Jan., 1835, *Gallatin's Writings*, 2: 479; *Wharton*, 2: 66; *Moore*, 5: 232.

¹² President Jefferson got a provisional appropriation of \$2,000,000 to purchase land at the mouth of the Mississippi before entering into negotiations, but actually exceeded this amount in the Louisiana purchase without further authorization. *Moore*, 5: 225. President Buchanan suggested in 1858 that an appropriation be made for a proposed purchase of Cuba. *Richardson*, *Messages*, 4: 456, 459, 538. An appropriation was made in the Act authorizing the acquisitions for the Panama Canal. 32 Stat. 481; *Crandall*, *Treaties, Their Making and Enforcement*, 2d. ed., Washington, 1916, p. 181.

¹³ Denmark, 1857, Art. 6; Hanover, 1861, Art. 5; Belgium, 1863, Art. 4.

¹⁴ Debate on Jay Treaty, 1796; Jefferson's opinion on the Louisiana Purchase; debate on the Russian treaty of 1868 ceding Alaska, *Wharton*, 2: 15-23. *Wharton*, after citing these discussions, concludes that "two points may be regarded as accepted in the practical working of our government. One is that without a congressional vote there can be no appropriation of money which a treaty requires to be paid. The other is that it should require a very strong case to justify Congress in refusing to pass an appropriation which is called for by a treaty." See also *Moore*, 5: 224-233.

¹⁵ During the debate in the Federal Convention on the constitution of the treaty power, Wilson of Pennsylvania was for requiring the sanction of the House

such treaties are valid and impose an obligation upon Congress to make the appropriation, a point of view well expressed by Senator Cullom in 1902:¹⁶

The House, each time the question was considered, insisted upon its powers, but nevertheless it has never declined to make an appropriation to carry out the stipulations of a treaty, and I contend that it was bound to do this, at least as much as Congress can be bound to do anything when the faith of the nation has been pledged.

There can, however, be no doubt but that Congress is the sole power for performing the obligation. Consequently, such provisions, although valid, cannot be executed until Congress has acted.¹⁷

of Representatives as well as the Senate. "As treaties," he said, "are to have the operation of laws, they ought to have the sanction of laws also." On vote, Pennsylvania alone supported the amendment, and immediately the clause as it now stands was passed unanimously. (Farrand, 2: 538.) A few days previously an amendment proposed by G. Morris, also of Pennsylvania, had failed. It had proposed, "but no Treaty shall be binding on the United States which is not ratified by a law." (*Ibid.*, 2: 392.) Referring to this debate in his message refusing to comply with the request of the House of Representatives for papers relating to the Jay Treaty, President Washington said, "It is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty." (Richardson, 1: 195; Annals, 4th Cong., 1st sess., p. 760.) A recent authority says: "That Congress is under no obligation to make the stipulated appropriation has not been seriously advanced by the House since 1868, although individual advocates of the view have not been wanting. (Crandall, *op. cit.*, p. 177.) See also Kent, Commentaries, 1: 165; Dana's Wheaton, sec. 543; Livingston, Sec. of State, 1833; Calhoun, Sec. of State, 1844; Wharton, 2: 67-68.

¹⁶ Cong. Rec. 35: 1083. The House of Representatives authorized a committee to investigate this statement, but no report seems to have been made. *Ibid.*, 35: 1178.

¹⁷ "And in such a case the representatives of the people and the States exercise their own judgment in granting or withholding the money. They act upon their own responsibility and not upon the responsibility of the treaty-making power. It cannot bind or control the legislature's action in this respect, and every foreign government may be presumed to know that so far as the treaty stipulates to pay money, the legislative sanction is required." *Turner v. American Baptist Union*, 2 McLean, 344 (1852). In reference to the discretion of Congress in this matter, this undoubtedly goes farther than the bulk of authorities. *Supra*, note 14. The House refused to vote appropriations for the purchase of Alaska until a preamble was agreed to, stating that the stipulations of such treaties "cannot be carried into full force and effect except by legislation, to which the consent of both Houses of Congress is necessary." 15 Stat. 198. See also Magoon, Reports, pp. 151 *et seq.*; C. P. Anderson, this JOURNAL, 1: 653.

2. The Constitution gives Congress power to "regulate commerce with foreign nations," "to lay and collect taxes, duties, imposts and excises," and provides that "all bills for raising revenue shall originate in the House of Representatives."¹⁸ The competence of the treaty power to conclude commercial treaties affecting the tariff was questioned by the House of Representatives during the debate on the commercial convention of 1815 with Great Britain. Cyrus King of Massachusetts on this occasion took the extreme position that treaties dealing with the "enumerated powers" of Congress must be laid before the House before they became valid, but this was modified in conference committee.¹⁹ On several occasions the House has asserted its abstract right, and in 1880 passed a resolution to the effect that the alteration of customs duties by the treaty power alone would, in view of Article 1, section 7, "be an infraction of the Constitution and an invasion of one of the highest prerogatives of the House of Representatives."²⁰ In 1844 the Senate refused to give its assent to a commercial treaty negotiated with the German states because of "want of constitutional competency" to make it, an action which moved Calhoun, then Secretary of State, to say:²¹

If this be the true view of the treaty-making power, it may be truly said that its exercise has been one continual series of habitual and uninterrupted infringements of the Constitution. From the beginning and throughout the whole existence of the Federal Government, it has been exercised constantly on commerce, navigation, and other delegated powers.

Although the competence of the treaty power has been clearly established by practice, the necessity of congressional action to carry out treaties affecting the revenue has usually been recognized, the negotiated instrument itself sometimes providing that it shall not

¹⁸ Art. 1, sec. 8, cl. 3, sec. 7, cl. 1.

¹⁹ Annals, 14th Cong., 1st sess., pp. 538, 1019; Moore, 5: 223.

²⁰ Cong. Rec., 10: 532; House Journal, 46th Cong., 2d sess., p. 323; Crandall, *op. cit.*, p. 195. See also, in reference to Hawaiian reciprocity treaty of 1884, House Report, No. 4177, 49th Cong., 2d sess.; in reference to reciprocity treaties of 1902, Cong. Rec., 35: 1178, 1181; C. P. Anderson, this JOURNAL, 1: 648 *et seq.*

²¹ Mr. Calhoun to Mr. Wheaton, June 28, 1844, Moore, 5: 164.

become valid until the necessary legislation has been passed.²² With some *dicta* to the contrary,²³ the courts have been inclined to recognize such treaties as valid and self-executing, though subject to any adverse action which Congress may subsequently take.²⁴

3. Congress is given power "to dispose of and make all needful rules and regulations respecting the territory" of the United States.²⁵ The validity of treaties annexing or ceding territory has been questioned on the ground of the invasion of this congressional prerogative.²⁶ As is well known, Jefferson doubted the competence of the treaty power to acquire territory and regarded his own acquisition of Louisiana as needing congressional ratification.²⁷ The power was, however, acquiesced in, in the case of both Louisiana and Florida, and in *American Insurance Co. v. Canter*,²⁸ Chief Justice Marshall considered the acquisition of territory to be inherent in the treaty-making power and remarked that it was the rule rather than the exception for treaties of peace to involve an acquisition or cession of territory. In the *Dred Scott* case,²⁹ Chief Justice Taney went so far as to assume that the treaty-making power could acquire territory and in doing so incorporate it into the United States in the meaning of the constitutional guarantees.

²² Art. 8 of the reciprocity treaty with Mexico of 1883 provided that the treaty should not go into effect "until the laws and regulations that each shall deem necessary to carry it into operation shall have been passed both by the Government of the United States of America and by the Government of the United Mexican States, which shall take place within twelve months from the date of the exchange of ratifications to which article ten refers." Congress failed to act, although the time was twice extended by protocol, and the treaty lapsed. Moore, 5: 222.

²³ "It certainly cannot be admitted that the power of Congress to lay and collect taxes and duties can be curtailed by an arrangement made with a foreign nation by the President and two-thirds of a quorum of the Senate." Fuller, C. J., in *Downes v. Bidwell*, 182 U. S. 370. See also White, J., dissent in *Dooley v. U. S.*, 182 U. S. 241, and concurrence in *Downes v. Bidwell*, 182 U. S. 313.

²⁴ *Bartram v. Robertson*, 122 U. S. 116 (1887); *Whitney v. Robertson*, 124 U. S. 190 (1888).

²⁵ Art. 4, sec. 3, cl. 2.

²⁶ It has also been suggested that annexation of territory might seriously affect the revenues and hence amount to an invasion of Art. 1, sec. 7, cl. 1. White, J., *Insular Cases*, *supra*, note 23; Magoon, Reports, p. 152.

²⁷ Jefferson, Works, 4: 500; Wharton, 2: 19; Moore, 5: 225.

²⁸ *American Insurance Co. v. Canter*, 1 Pet. 511 (1825).

²⁹ *Scott v. Sanford*, 19 How. 393 (1857).

This view, however, was somewhat modified in the Insular Cases, which have reached a peculiar compromise by acknowledging the competence of the treaty-making power to acquire territory but reserving to Congress the authority to make it a part of the United States in the usual meaning of the term in the Constitution. Thus treaty acquisitions are neither foreign³⁰ nor part of the United States,³¹ but occupy the status of unincorporated territory, or "territory appurtenant and belonging to the United States but not part of the United States within the revenue clauses of the Constitution" or, it may be added, of the guarantees relating to criminal procedure till Congress has acted.³² Thus treaties annexing territory and also those ceding it (with the possible exception of territory within a State) are valid, but the *status* of annexed territory depends upon congressional action. Provisions in such treaties attributing specific rights to individuals in the annexed territory are, however, self-executing and immediately applicable in courts.³³

4. Congress is given power "to constitute tribunals inferior to the Supreme Court."³⁴ Treaties providing for the organization of extra territorial and international courts do not conflict with this provision, nor with the provision of Article III that "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and of the inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."³⁵ In organizing courts the treaty power appears to be bound by none of the limitations here prescribed

³⁰ *De Lima v. Bidwell*, 182 U. S. 1; *Fourteen Diamond Rings v. U. S.*, 183 U. S. 176; *Gonzales v. Williams*, 192 U. S. 1.

³¹ *Downes v. Bidwell*, 182 U. S. 244; *Dooley v. U. S.*, 183 U. S. 151.

³² *Brown, J.*, in *Downes v. Bidwell*, 182 U. S. 244 (1900); *Hawaii v. Mankichi*, 190 U. S. 197; *Dorr v. U. S.*, 195 U. S. 138. These opinions agree with the exhaustive report of C. E. Magoon, legal adviser of the War Department, on the status of the dependencies of the United States, Report, Feb. 12, 1900, pp. 37-120; Sept. 20, 1900, pp. 121-173.

³³ *U. S. v. Percheman*, 7 Pet. 51, overruling on this point *Foster v. Neilson*, 2 Pet. 253; *U. S. v. Arredondo*, 6 Pet. 691; *Moore*, 1: 415.

³⁴ Art. 1, sec. 8, cl. 9.

³⁵ Art. 3, sec. 1.

for Congress in organizing "federal courts."³⁶ Thus the Supreme Court has said:³⁷

The treaty-making power vested in our government extends to all proper subjects of negotiation with foreign governments. It can, equally with any of the former or present governments of Europe, make treaties providing for the exercise of judicial authority in other countries by its officers appointed to reside therein. . . . The Constitution can have no operation in another country. When, therefore, the representatives or officers of our government are permitted to exercise authority of any kind in another country, it must be on such conditions as the two countries may agree, the laws of neither one being obligatory upon the other.

The action of the treaty power since its foundation in providing for extraterritorial courts with civil and criminal jurisdiction over American citizens in non-Christian countries;³⁸ for foreign consular courts with jurisdiction over the seamen of their countries in the United States;³⁹ for special claims courts to distribute international indemnities;⁴⁰ for

³⁶ It may be noted that Congress is not limited by this provision in organizing courts for the territories (*American Insurance Co. v. Canter*, 1 Pet. 511), and that the executive may organize courts for local administration, but may not endow them with general admiralty and prize jurisdiction (*Jecker v. Montgomery*, 13 How. 498), in territory under military occupation (*Neeley v. Henkel*, 180 U.S. 109), or in annexed territory under military government. (*Cross v. Harrison*, 16 How. 164; *Magoon*, Reports, pp. 16, 30.)

³⁷ *In re Ross*, 140 U.S. 453 (1890), Scott, p. 238.

³⁸ The earliest appears to have been with Morocco, 1787, Arts. 20-21.

³⁹ The authority of such courts has been called "ministerial," not "judicial" (*Cushing*, Att. Gen., 1857, 8 Op. 390), but it is difficult to mark the distinction, for the French treaty of 1788, Art. 12, provided that disputes between seamen "shall be determined by the respective consuls . . . either by a reference to arbitration or by a summary judgment" and "the appeals from the said consular sentences shall be carried before the *tribunaux* of France or of the United States, to whom it may appertain to take cognizance thereof." The Prussian treaty of 1828, Art. 10, gives the consuls the right "to act as *judges* and arbitrators in such differences as may arise between the captain and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities." See *The Königin Luise*, 184 Fed., 170 (1910).

⁴⁰ By the treaty with France of 1803, the United States agreed to provide for the distribution of an amount not over twenty million francs to its citizens for debts other than spoliations due before Sept. 30, 1800. No specific provision was made for liquidating the spoliation claims, but after three-quarters of a century Congress authorized the Court of Claims to undertake this task. (Moore, 6: 1022; G. A. King, *The French Spoliation Claims*, this JOURNAL, 6: 359, 629, 830.) Congress

special and permanent arbitration courts,⁴¹ and for an international court of prize,⁴² adds the sanction of practice to the logic of the court. By providing supplementary legislation⁴³ where necessary to make such courts effective, Congress has recognized their validity, and its own obligation to carry out the undertakings initiated by the treaty power. It appears that the constitutional provisions refer only to courts exercising the judicial power described in Article III, section 2, within the territory of the actual States of the Union, and do not prevent the organization in a different manner of courts in other territory or exercising a different judicial power.⁴⁴ A possible conflict which may arise between the exercise of jurisdiction by such treaty-established courts and the judicial power of the United States will be considered later.⁴⁵

5. The Constitution gives Congress power "to declare war."⁴⁶ In his address to the Senate on January 22, 1917, President Wilson suggested that the time was near when the United States would "add their authority and their power to the authority and power of other nations to *guarantee* peace and justice throughout the world." A widely dis-

was dilatory in establishing the commission required by Arts. 9 and 11 of the treaty with Spain of 1819, but the Supreme Court said, "undoubtedly Congress was bound to provide such a tribunal as the treaty described." (*U. S. v. Ferreira*, 13 How. 45, 48; Moore, 5: 856.) Commissions were also established under the treaty with Mexico, 1848, Art. 15; treaty with Spain, 1898, Art. 7.

⁴¹ See Jay Treaty with Great Britain, 1794, Arts. 6, 7; Treaty of Washington with Great Britain, 1871; I Hague, 1899, 1907.

⁴² XII Hague, 1907. This convention has not been ratified, but it was signed and ratification was advised by the Senate, Feb. 15, 1911. The jurisdiction of the court was made alterable to an action in damages against the United States by a protocol, but apprehension of a conflict with *judicial* power, not *congressional* power, was the motive.

⁴³ In reference to American consular courts, see Act of Aug. 11, 1848, and Rev. Stat. 4083-4130; Moore, 2: 613. In reference to foreign consular jurisdiction over seamen, see Act of June 11, 1864, 13 Stat. 12; Judicial Code of 1911, sec. 271. In reference to Spanish treaty claims court, see Act of March 2, 1901, 31 Stat. 877. International arbitration courts have not required supplementary legislation in their organization, although payment of an award against the United States requires an appropriation by Congress.

⁴⁴ See J. P. Hall, Constitutional Law, sec. 263, *supra*, notes 36, 37.

⁴⁵ *Infra*, p. 85.

⁴⁶ Art. 1, sec. 8, cl. 11.

cussed proposal for such a guarantee is that of the League to Enforce Peace. After providing for arbitration and conciliation, this program stipulates that "the signatory Powers shall jointly use forthwith both their economic and military forces against any one of their number that goes to war, or commits acts of hostility, against another of the signatories before any question arising shall be submitted as provided in the foregoing."

It has been objected that the United States could not enter into a treaty with such a provision because, if faithfully executed, it would amount to a delegation of the power to declare war to the international commission which was given the function of declaring when the circumstances contemplated existed, or at least it would deprive Congress of its discretion in performing this "solemn, sovereign act."⁴⁷

The question has never arisen for judicial decision, but it appears that the treaty-making power sustained the constitutionality of such a provision in ratifying the treaty with Panama of 1903. Article 1 provides "The United States guarantees and will maintain the independence of the Republic of Panama." It is impossible to interpret this provision except as demanding a declaration of war in certain contingencies.⁴⁸ Treaties of guarantee⁴⁹ and active

⁴⁷ *Cosmos*, *The Basis of a Durable Peace*, New York, 1917, p. 103; W. J. Bryan, *Lake Mohonk Conference on International Arbitration*, 1916, p. 146. See also St. George Tucker, ed. of *Blackstone*, 1: 338.

⁴⁸ There has been much discussion of the nature of the obligation assumed by states in treaties of guarantee. It is generally agreed that the obligation must be interpreted with reference to the political situation. Thus, in a collective guarantee, the minority of guarantors would not be obliged to go to war if the majority were bent on themselves violating the guarantee. Lord Derby, 1876, *Hansard*, III, 229: 1891. In 1867 Lord Derby had taken the extreme position that a collective guarantee imposed no obligation unless *all* the guarantors were in concert. (*Hansard*, III, 188: 150.) Mr. Gladstone, 1870, 1872, 1877, *Hansard* III, 273: 1787, 210: 1178, 232: 475; Oppenheim, *International Law*, 1st ed., 1: 575; G. G. Wilson, *Neutralization in Theory and Practice*, *Yale Review*, 4: 474 (April, 1915); C. P. Sanger and H. T. J. Norton, *England's Guarantee to Belgium and Luxemburg*, London, 1915, p. 120.

⁴⁹ The most emphatic guarantee was that made to Colombia in the treaty of 1846, Art. 35, sec. 1: "And in order to secure to themselves these advantages, etc., . . . the United States guarantee, positively and efficaciously, to New Granada, by the present stipulation, the perfect neutrality of the before-mentioned isthmus, with the view that the free transit from the one to the other sea may not be

alliance⁵⁰ have not, it is true, been common in the history of the United States, although in that of other countries they play a prominent part.

Virtually the same constitutional question is at issue in treaties prohibiting war under specified conditions — the discretion of Congress to declare war is equally limited. Of this character are Article 21 of the Treaty of Guadalupe Hidalgo with Mexico,⁵¹ Article 1 of the II Hague Convention, 1907,⁵² and the twenty-odd Wilson-Bryan peace treaties concluded since 1914. The latter, in requiring the parties "not interrupted or embarrassed in any future time in which this treaty exists; and in consequence the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory." It does not appear to have been effective. See also treaties with France, 1778, Art. 11; Nicaragua, 1837, Art. 15; Cuba, 1903, Art. 7.

⁵⁰ The only treaty of active alliance concluded by the United States, has been that with France of 1778, concluded before either the Articles of Confederation or the Constitution were in effect. The military coöperation required by Art. 1 referred only to the existing war with Great Britain.

⁵¹ "And if by these means they should not be able to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborhood, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case." Revised, 1853, Art. 7. A number of treaties require the parties to abstain from reprisals or war for violation of the terms of the treaty until the "party considering itself offended shall first have presented to the other a statement of such injuries or damages, verified by competent proof, and demanded justice and satisfaction, and the same shall have been either refused or unreasonably delayed." Morocco, 1787-1836, Art. 24; 1836, Art. 24; Algiers, 1795-1815, Art. 22; Tripoli, 1796-1805, Art. 12; 1805, Art. 15; Tunis, 1797-1904, Art. 15; Brazil, 1828, Art. 33, sec. 3; Peru-Bolivia, 1836-1839, Art. 30, sec. 3; Colombia, 1846, Art. 35, sec. 5; Peru, 1851-1863, Art. 40, sec. 3; Bolivia, 1858, Art. 36, sec. 3.

⁵² The reservations of the United States on this convention referred only to the manner of arbitration, not to the duty to abstain from war, Malloy, *Treaties, etc.*, p. 2259. The compulsory arbitration provisions of the proposed Taft treaties of 1911 were amended by the Senate on constitutional grounds, but not the one here in question. The majority of the Foreign Relations Committee thought that ultimate decision by a joint high commission on the question of what subjects were justiciable and hence subject to compulsory arbitration would amount to an unconstitutional delegation of power to decide in each instance on this question by the treaty power itself. See *infra*, note 121.

to declare war or begin hostilities during such investigation and report" (of an international commission, which may occupy a year), limit the discretion of the war power in point of time, while the "Convention respecting the Limitation of Force for the Recovery of Contract Debts" (II Hague, 1907) limits the subject-matter which may ultimately be made a pretext for war.

Treaties of this character could hardly come before the courts for interpretation. A declaration of war contrary to the treaty, or a failure to declare war when required by the treaty, would be equally accepted by the judiciary as valid decisions of a "political question."⁵³ Yet it is believed that long practice⁵⁴ and the reason of the thing fully sustain the constitutional competence of the treaty-making power to conclude such agreements and their validity when ratified. The treaty power does not "declare war"; it simply, in the words of Mr. Taft:⁵⁵

⁵³ The Prize Cases, 2 Black 635.

⁵⁴ Aside from its first treaty, the French treaty of alliance and guarantee of 1778, no less than thirty treaties, distributed throughout its history, definitely limit the war power of the United States (*supra*, notes 51 and 52), not to mention the obligation implied in the numerous treaties stipulating for "perpetual peace and amity" between the contracting parties, the many bilateral arbitration treaties providing for the submission to arbitration of all disputes of "a legal nature" which "do not affect the vital interests, the independence, or the honor of the two contracting states, and do not concern the interests of third parties," and the general pacific settlement treaties of The Hague providing that "in case of serious disagreement or dispute, before an appeal to arms, the contracting Powers agree to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly Powers."

⁵⁵ W. H. Taft, address May 26, 1916, before League to Enforce Peace, Enforced Peace, p. 64. Ex-Justice Hughes, in carefully weighed terms, has expressed the same opinion as the ex-President: "Congress alone has the power to declare war, and any agreement made by the United States to cooperate in coercive measures amounting to war would necessarily be subject to the exercise by Congress of its unquestioned authority. But this does not mean that the treaty-making power may not, if it is found to accord with national interests and policies, aid in forming an international organization believed to be necessary and practicable, although its offer of cooperation in any given contingency must be subject to the well-known conditions which inhere in our constitutional form of government. Congress indeed will have all its powers, but its course of action will depend upon the world outlook of the nation, and we should do what we can to promote an enlightened conception of our international responsibility." Address before Long Beach Conference on Foreign Relations, May 28, 1917, Proceedings, Academy of Political Science, Vol. 7, No. 2, p. 14.

creates the obligation to declare war (or refrain from doing so) in certain contingencies. That obligation is to be discharged by Congress under its constitutional power to declare war. If it fails to do so, and thus comply with the binding obligation created by the treaty-making power, then it merely breaks the contract of the Government. It is left to Congress to carry out that which we in a constitutional way have agreed to do. Thus to impose in a constitutional way, by treaty, an obligation on Congress is not to take away its power to discharge it or to refuse to discharge it.

It is probable that the use of force to fulfill the guarantees required by such a concert of Powers would not generally require a declaration of war, but would be within the competence of the President alone. Article 1, section 8, clause 15 of the Constitution authorizes Congress "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions." In conferring this power upon the President, Congress has interpreted it as including the land and naval forces as well as the militia,⁵⁶ and "danger of invasion" as well as actual invasion.⁵⁷ A violation of a treaty to which the United States was a party, if not a violation of a "law of the Union,"⁵⁸ might be accompanied by circumstances amounting to "invasion" or "danger of invasion."⁵⁹ The power to determine when these circumstances exist has been held to lie with the President,⁶⁰ and it was under this power that President Lincoln first called out the national forces to

⁵⁶ Act of March 3, 1807, 2 Stat. 443.

⁵⁷ Act of Jan. 21, 1903 (Dick Act), 32 Stat. 776, sec. 4; 35 Stat. 400; 38 Stat. 284; based on Acts of May 2, 1792, and Feb. 28, 1795, 1 Stat. 264, 424.

⁵⁸ Although by Art. 6, sec. 2, treaties are the "supreme law of the land," for this clause "laws" have been held to refer only to laws of territorial effect. Wickersham, Att. Gen., 29 Op. 322 (1912); Ordranau, *Constitutional Legislation*, Philadelphia, 1891, p. 501; J. N. Pomeroy, *Constitutional Law*, 9th ed., Boston, 1886, p. 387; *Kneedler v. Lane*, 45 Pa. St. 238, 244 (1863). A contrary opinion was expressed by Judge Advocate General Davis in 1908, Cong. Rec., 42: 6943. See also report of Efficiency and Economy Committee, State of Illinois, 1915, pp. 889 *et seq.*

⁵⁹ The proposition that this clause permits the use of forces only within the territory of the United States can hardly be sustained in view of the fact that statutes specify that they may be used "within or without the territory of the United States." 35 Stat. 400, sec. 5; 38 Stat. 284, sec. 4. A use outside the territory, however, could only be justified by hot pursuit of the invader or strategic necessity to apprehend a threatened attack. See Wickersham, Att. Gen., 29 Op. 324; Pomeroy, *Constitutional Law*, p. 387.

⁶⁰ *Martin v. Mott*, 12 Wheat. 19; *Luther v. Borden*, 7 How. 1.

suppress the Southern rebellion.⁶¹ Undoubtedly the uses of the militia contemplated by this clause are essentially domestic, yet the practice under it shows that force may be used to the greatest extent without a declaration of war by Congress.

In external affairs an analogous authority to use the forces is given immediately to the President by the implied power over foreign relations and the powers inherent in the "Commander in Chief of the army and navy of the United States."⁶² This office undoubtedly confers authority to use these forces for protective and defensive purposes in measures short of war, such as display of force and limited use of force, an authority frequently exercised.⁶³ Such measures as these, coupled with the economic pressure which might be brought by embargoes and non-intercourse, would be the most important means for carrying out obligations of international guarantee. The latter methods, as interfering with commerce and revenue, would require the sanction of Congress,⁶⁴

⁶¹ It was of course impossible to declare war in this case. See *The Prize Cases*, 2 Black 635.

⁶² Art. 2, sec. 2, cl. 1.

⁶³ Authorized by President alone: Navy dispatched against Tripolitan pirates, 1801 (Jefferson's Message, Dec. 8, 1801; Richardson, 1: 326; action later ratified by Congress, Act. of Feb. 6, 1802, 2 Stat. 129); sloop *Dale* threatened bombardment of Island of Johanna, 1851 (Moore, 7: 112); bombardment of Greytown, Nicaragua, 1854 (Moore, 7: 112); engagement of U. S. S. *Wyoming* in Straits of Shimonosiki, Japan, 1863 (Moore, 7: 116); dispatch of U. S. S. *Shawmut* to Venezuela, 1871 (Moore, 7: 112); dispatch of U. S. S. *Wachusett* to Ecuador, 1885 (Moore, 7: 108); landing of forces in Peking, China, in defense of legation from Boxers, 1900 (Moore, 5: 476-493); landing of troops at Vera Cruz, Mexico, April 21, 1914 (Am. Year Book, 1914, p. 34; later ratified by joint resolution of Congress expressly denying intention to make war, April 22, 1914, 38 Stat. 770); punitive expedition to Mexico, 1916 (Am. Year Book, 1916, pp. 79, 312; ratified by Senate resolution denying intention to intervene, March 17, 1916, Cong. Rec., 53: 4274).

With authority of Congress but no declaration of war: French reprisals, 1798-1799 (1 Stat. 361, 572, 578, 743; Moore, 7: 155); dispatch of navy against Algerine pirates, 1815 (3 Stat. 230); dispatch of frigate *Sabine* to Asuncion, Paraguay, 1858 (joint resolution, June 2, 1858, 11 Stat. 370; Moore, 7: 109).

See E. Root, address in the Senate, Aug. 14, 1912, Cong. Rec. 48: 10929; Military and Colonial Policy of the United States, Cambridge, 1916, p. 157; J. R. Clark, Jr. (Solicitor of Dept. of State), Right to protect citizens in foreign countries by landing forces, Washington, 1912; E. M. Borchard, *The Diplomatic Protection of Citizens Abroad*, New York, 1915, p. 452.

⁶⁴ Congress has authorized general embargoes in 1794 (1 Stat. 400) and 1807 (2 Stat. 451); nonintercourse with designated foreign states, 1798 (1 Stat. 565)

but a declaration of war would seldom be appropriate. War has for its immediate end the "complete submission of the enemy"⁶⁵ so that the victorious party may carry out his ultimate political ends. The use of force here contemplated would have the immediate end of enforcing international law and treaties. There would be no question of bringing about "the complete submission" of the state acted against but only such a change of policy as might be necessary to insure the observance of law. There is no clash of equally valid political ends, but simply a clash of the policy of one with the law.

A leading authority on the protection of citizens abroad has said:^{65a}

Inasmuch as the Constitution vests in Congress authority "to declare war" and does not empower Congress to direct the President to perform his constitutional duties of protecting American citizens on foreign soil, it is believed that the Executive has unlimited authority to use the armed forces of the United States for protective purposes abroad in any manner and on any occasion he considers expedient.

If the general powers of the Executive confer this authority for the protection of citizens abroad, it seems probable that they confer an equal authority to employ forces in a joint policing operation for the maintenance of international law and treaties. It has long been recognized that the maintenance of the general law is an essential element in the security of each state,^{65b} and a legal obligation on the part of each state to

and 1809 (2 Stat. 528), and an embargo on arms to American countries in case of domestic violence, 1912 (37 Stat. 630). The use of reprisals would also require congressional sanction (Constitution, Art. 1, sec. 8, cl. 11). See President Jackson's demand for authority to use reprisals against France, Message, Dec. 1834, Moore, 7: 123.

⁶⁵ U. S. Rules of Land-Warfare, 1914, Art. 10; Wilson and Tucker, *International Law*, 7th ed., p. 237.

^{65a} Borchard, *op. cit.*, p. 452.

^{65b} "The laws of natural society are of such importance to the safety of all states, that if they accustom themselves to trample them under their feet, no people can flatter themselves with the hopes of self-preservation, and of enjoying tranquillity at home, whatever wise, just, or moderate measures they may pursue. Now all men and all states have a perfect right to those things that are necessary to their preservation, since this right is equivalent to an indispensable obligation. All nations have then a right to repel by force what openly violates the laws of the society which nature has established among them, or that directly attacks the welfare and safety of that society." Vattel, *Le Droit des Gens*, prelim. sec. 22. See also Grotius, *De Jure Belli ac Pacis*, Prolegomena, secs. 18, 19; lib. 2, c. 20, sec. 40, par. 4; c. 25, sec. 6.

aid in the maintenance of that law has been growing into recognition.⁶⁵ It follows that the employment of force, if necessary to maintain the law, is justified by the elementary right of self-preservation, if not positively demanded by the responsibilities of membership in the society of nations. Since the President, as Chief Executive and Commander in Chief of the army and navy, is charged with the defense of the nation and the fulfillment of international responsibilities of an executive nature, his authority to use the national forces so far as necessary to maintain the law of nations seems to be constitutionally recognized and its exercise would seem to be no infringement upon the prerogative of Congress to declare war.

6. Congress is given power "to define and punish piracies" and "offenses against the law of nations."⁶⁶ Secretary of State Marcy advised⁶⁷ that a provision in a proposed treaty with Venezuela providing that citizens of one country accepting letters of marque to cruise against the other should be treated as pirates, would be void as in conflict with this constitutional prerogative of Congress, although he admitted that such provisions had been included in a number of earlier treaties "evidently by an oversight of one of the provisions of the Constitution."

⁶⁵ "If the law of nations is to be binding, if the decisions of tribunals charged with the application of that law to international controversies are to be respected, there must be a change in theory, and violations of the law of such a character as to threaten the peace and order of the community of nations must be deemed to be a violation of the right of every civilized nation to have the law maintained and a legal injury to every nation." (E. Root, *The Outlook for International Law*, this JOURNAL, 10: 9.) "That commonwealth is best administered in which any wrongs that are done to individuals are resented and redressed by the other members of the community, as promptly and as vigorously as if they themselves were personal sufferers." (Plutarch, Solon, sec. 18.) This applies to the great commonwealth of civilized states. If this feeling were utterly extinct, the phraseology of international law would be idle gibberish and the world would be utterly abandoned to the cupidity and the violence of the selfish and the strong. If this feeling were universal or even if it were materially strengthened, the projects of compulsory arbitration (which one so often reads of) would become realities instead of being sneered at as reveries, and warfare, with its calamities and its abominations, might be almost banished from the globe." (Creasy, *First Platform of International Law*, London, 1876, p. 44.) See also Sheldon, *Amos, Jurisprudence*, London, 1872, pp. 411, 456.

⁶⁶ Art. 1, sec. 8, cl. 10.

⁶⁷ Mr. Marcy, Sec. of State, to Mr. Aspurta, Nov. 15, 1854; Moore, 2: 978, 5: 169. See also *The Bello Corrunes*, 6 Wheat. 152.

Congress evidently did not entertain this view of its prerogatives in its early history, for the Neutrality Act of 1794 provided that "nothing in the foregoing Act shall be construed to prevent the prosecution or punishment of . . . any piracy defined by a treaty or other law of the United States."⁶⁸ The term "treaty" was undoubtedly inserted to insure the validity of provisions of this character in treaties with France (1778, Article 21), The Netherlands (1782, Article 19), Sweden, (1783, Article 23), and Prussia (1785, Article 20) all then in force.⁶⁹ By 1818 the doctrine had grown up that the Federal courts enjoy no common-law criminal jurisdiction,⁷⁰ and in the revision of the neutrality laws of that date the proviso was changed to read "any piracy defined by the laws of the United States."⁷¹ In 1847 Congress again recognized the validity, if not the self-executing character, of such provisions by passing a law "providing for the punishment of offenses declared piracy in United States treaties,"⁷² an Act which Mr. Marcy must have overlooked in writing his opinion seven years later.

Congress is given power "to make rules concerning captures on land and water."⁷³ Rules of contraband, blockade and maritime capture were among the commonest provisions of early treaties and form a large part of the subject-matter of the Hague Conventions of 1907 and the Declaration of London of 1909.⁷⁴ No instance is known of a doubt being expressed on the constitutionality of these treaties on the grounds of usurpation of the prerogatives of Congress. On the contrary, the courts have regarded these provisions as self-executing and have applied them as law in numerous cases.⁷⁵

⁶⁸ 1 Stat. 384, 520.

⁶⁹ Other treaties containing this provision are Great Britain, 1794, Art. 21; Spain, 1795, Art. 14; Colombia, 1824, Art. 22; Guatemala, 1849, Art. 24; Salvador, 1850, Art. 20; Peru, 1870, Art. 28; Ecuador, 1879, Art. 25.

⁷⁰ *U. S. v. Worral*, 2 Dall. 384 (1798); *U. S. v. Hudson*, 7 Cranch 32 (1812); *U. S. v. Coolidge*, 1 Wheat. 415 (1816); *U. S. v. Eaton*, 144 U. S. 677.

⁷¹ 3 Stat. 447, 450, sec. 13.

⁷² 9 Stat. 175; Rev. Stat., sec. 5374; Criminal Code of 1909, sec. 305.

⁷³ Art. 1, sec. 8, cl. 11.

⁷⁴ Although never ratified, the Senate advised ratification of the Declaration, April 24, 1912, Charles, *Treaties*, p. 266.

⁷⁵ As examples see *The Phoebe Anne*, 3 Dall. 319; *The Amity*, Fed. Cas. 9741; *The Friendship*, Fed. Cas. 3291 (all applying Art. 17 of the treaty with France,

A comparison of this provision of the Constitution with that relating to "piracies" and "offenses against the law of nations" indicates that there is no distinction between the authority of Congress in the two cases. If the prerogative of Congress could be invoked as against treaty crimes, so could it against treaty prize rules. The distinction actually rests on the fact that the criminal law applicable by the Federal courts has been held to be strictly statutory,⁷⁶ whereas prize law is embodied in international law.⁷⁷ This reasoning is further supported by the attitude of courts on treaties requiring extradition for certain offenses. These treaties involve no delegated power of Congress, so there is no possibility of a conflict, yet it has been generally held that legislation is necessary to give courts authority to execute them.⁷⁸ The obligation of Congress to supply the necessary legislation seems to be unquestionable.

7. Many of the other powers specifically given to Congress cover a subject-matter frequently included in treaties. It is enough to mention the establishment of a uniform rule of naturalization,⁷⁹ the fixing of a standard of weights and measures,⁸⁰ the establishment of post offices,⁸¹ the protection of patents and copyrights.⁸² In fact, the majority of

1778); *The Appam*, 37 Sup. Ct. 337 (applying XIII Hague Convention of 1907, Art. 22).

⁷⁶ *Supra*, note 70.

⁷⁷ *Glass v. The Betsey*, 3 Dall. 6 (1794); *Talbot v. Jansen*, 3 Dall. 133 (1796); *The Estrella*, 11 Wheat. 298 (1819).

⁷⁸ *Case of the British Prisoners*, 1 Wood and Min. 66; *In re Metzger*, 5 How. 176 (1847); Corwin, *National Supremacy*, New York, 1913, p. 278; this JOURNAL, 10: 723.

⁷⁹ Art. 1, sec. 8, cl. 4. See naturalization treaties, Great Britain, 1820; North German Union, 1868, etc.

⁸⁰ Art. 1, sec. 8, cl. 5. See International Bureau of Weights and Measures, 1875.

⁸¹ The Universal Postal Union Conventions, 1891, 1897, were ratified by the President alone, under authority of an Act of Congress, June 8, 1872, 17 Stat. 304, sec. 167; Moore, 5: 220.

⁸² Art. 1, sec. 8, cl. 8. Literary and Artistic Copyright Convention with South American States, 1902. Congress has authorized the President to regulate international copyright by proclamation on a reciprocal basis, Act of March 3, 1891, 26 Stat. 1110, sec. 13; Moore, 5: 219. Convention for International Protection of Industrial Property (patents and trade-marks), 1883. Congress has no independent power to regulate trade-marks (*Trade-Mark Cases*, 100 U. S. 82 (1879)), but the treaty power can act in this field and Congress may then pass laws supplementary to conventions. Corwin, *op. cit.*, p. 205.

powers delegated to Congress are eminently appropriate for treaty negotiation and have been the subject of a large part of the treaties ratified and acted upon in the past. This fact certainly raises a presumption that the treaty power is competent to deal with matters delegated to Congress, for were the opposite true, the number of constitutional treaties to which the United States is a party would probably not exceed a score, and these, dealing solely with the "nondelegated" or "reserved powers" of the States, would be the very ones denounced as unconstitutional by the "States' rights" school.⁸³ If in truth the treaty power were doomed to steer between a perpetual Scylla of "States' rights" and an endless Charybdis of congressional prerogatives, the ship of state would soon be shattered upon the rocks of unconstitutionality in its international dealings.

It must always be borne in mind that in most cases powers were given to Congress in pursuance of a scheme of distribution between Congress and State legislatures. Where no distribution between Congress and the treaty-making power was intended, none was made. If a ratified treaty covers a subject-matter appropriate for international negotiation, the fact that it concerns matters within the powers of Congress enumerated by the Constitution does not affect its validity. The only question that can arise is whether or not it is self-executing.

Practice indicates that treaty provisions dealing with matters which for historical and practical reasons have been placed by the Constitution peculiarly within legislative competence,⁸⁴ require congressional coöperation for their execution. Of this character are treaty provisions dealing with finances, whether (1) requiring appropriations of money, or (2) altering revenue laws and commercial regulations. While, even in these matters, Congress is under a positive obligation to act so as to give

⁸³ See H. S. Tucker, *Limitations on the Treaty-Making Power under the Constitution of the United States*, Boston, 1915; W. E. Mikell, *University of Pennsylvania Law Rev.*, 57: 435, 528.

⁸⁴ The Constitution not only gives the financial powers to Congress, but it gives them exclusively and especially to the House of Representatives. The terminology of Art. 1, sec. 7, cl. 1, and Art. 1, sec. 9, cl. 7, is a different sort of delegation from the powers given by Art. 1, sec. 8. This is a recognition of the historical connection between control of the purse and the rise of the House of Commons in England. See the *Federalist*, No. 58; Magoon, *Reports*, p. 151.

effect to a ratified treaty, yet the treaty-making power is under an equal obligation to consider, in connection with its view of international policy, the views on domestic policy of Congress, before finally ratifying the instrument. In these matters foreign and domestic policy are connected with extraordinary intimacy, and a complete collaboration of the treaty power and the legislative power is necessary. An opportunity for Congress to pass upon treaties of this character before ratification would seem generally expedient though not legally necessary.⁸⁵

Other treaty provisions require for their performance detailed supplementary legislation or specific acts which the Constitution directs to be performed by Congress. In this category are treaty provisions requiring (3) the incorporation and administration of territory,⁸⁶ (4) the organization of courts and carrying out of their awards, and (5) a declaration of war in certain contingencies, or abstention from war.⁸⁷ In these cases Congress is bound to act and carry out in good faith the obligations which the treaty power has undertaken. These matters are ones upon which a proper decision might be expected from a comprehensive view of international relations, and hence the treaty power enjoys a greater freedom of action than in those of the former category.

Another class of treaty provisions are by nature self-executing, but because of historical tradition and constitutional interpretation require legislation to be executable. Here are included treaties (6) defining crimes and extending criminal jurisdiction. The common law has been traditionally assiduous in protecting the individual against arbitrary criminal punishment, and this spirit, especially in reference to criminal procedure, has been embodied in Article 3, section 2, clause 3, the Fifth and Sixth Amendments, but Federal courts are not denied a general

⁸⁵ The objection brought in the Federal Convention of 1787 against such submission to Congress, that it would make secrecy impossible (Farrand, *op. cit.*, 2: 538), would probably have less weight at present.

⁸⁶ The terminology of Art. 4, sec. 3, cl. 2, indicates that the power is supplementary in character.

⁸⁷ That the power of Congress to declare war is directory, rather than a peculiar congressional prerogative, is indicated by the incorporation in the same clause of the power to "make rules concerning captures," which is clearly shared with the treaty power.

criminal jurisdiction by any specific clause of the Constitution, and in some early cases they actually assumed jurisdiction of crimes defined by customary international law.⁸⁸ This view has, however, changed, and it is now held that the criminal jurisdiction of Federal courts is entirely statutory. Hence treaty crimes must be incorporated in Acts of Congress before they become cognizable in Federal courts.⁸⁹

Still other treaty provisions are self-executing in the sense that courts can take cognizance of and apply them immediately in appropriate cases, while others may be carried out by executive, administrative, and military officers without further legislation. Yet in the cases where the coöperation of Congress is necessary, Congress is obliged to act, exercising discretion only as to the means most suitable for attaining the ends contemplated by the treaty, and the obligation is none the less binding in international and constitutional law⁹⁰ from the fact that the Constitution furnishes no power to compel it. A refusal to act would be equivalent to President Jackson's refusal to execute the decree of the Supreme Court in the case of *Worcester v. Georgia*.⁹¹ The entire

⁸⁸ *In re Henfield*, Fed. Cas. 6360 (1793); *U. S. v. Ravarra*, 2 Dall. 297 (1793).

⁸⁹ Congress has passed laws giving courts jurisdiction over treaty piracy (Crim. Code, 1909, sec. 305); extradition (Rev. Stat. secs. 5270-5280); deserting seamen (Rev. Stat. 5280-5281), and assistance of foreign consuls (Judicial Code of 1911, sec. 271). Although State courts must regard treaties as the supreme law of the land, they appear to be excluded from jurisdiction of treaty crimes by the Judicial Code, sec. 256, cl. 1, which gives the Federal courts exclusive jurisdiction "of all crimes cognizable under the authority of the United States." A treaty crime would probably be considered in this category, even if because of the failure of Congress to act, the Federal courts could not exercise jurisdiction.

⁹⁰ A conflict between the Constitution and international law is not to be presumed. What is demanded by international law must be also by the Constitution in order that the fundamental object of the latter may be attained. International law may offer a definite sanction for the fulfillment of treaties, and were the Constitution to oppose obstacles to their fulfillment, the result might be disaster for the whole country and a complete nonfulfillment of the fundamental objects stated in the preamble, to "promote the general welfare; etc." To the same effect Pillet generalizes that courts must observe the more fundamental obligations of international law, even above municipal law, "on penalty of exposing the state to a responsibility which may paralyze its sovereignty and put obstacles to the reign of its national law." *Rev. Gén. de Droit Int. Pub.*, 5: 87.

⁹¹ *Worcester v. Georgia*, 4 Pet. 515 (1832). In another case Jackson is reported to have said, "John Marshall has made his decision; now let him enforce it." H. W. Elson, *History of the United States of America*, New York, 1910, p. 500.

system of the Constitution demands that each department accept in good faith and coöperate in carrying out the undertakings of the other departments.

TREATY POWER AND JUDICIAL POWER

The Constitution⁹² provides that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."⁹³ An actual exercise of judicial power by the treaty power seems improbable,⁹⁴ but question has arisen of the constitutionality of treaties vesting part of "the judicial power of the United States" in authorities other than the Supreme and inferior courts of the United States.

If courts can be organized⁹⁴ and the law to be applied laid down by treaty,⁹⁵ jurisdiction adequate to carry out the purpose of their organization would seem to be a necessary implication. Doubts have, however, been expressed. The XII Hague Convention of 1907 proposed an international prize court with appellate jurisdiction in prize cases. Doubts as to its constitutionality were felt by Secretary Root, and he instructed⁹⁶ the American delegation to the London Naval Conference (designed to codify the law for this court) to propose a supplementary protocol, whereby, instead of subjecting decisions of the United States courts to appeal and possible reversal in the International Prize Court, a direct

⁹² Art. 3, sec. 1.

⁹³ The negotiation of a treaty finally disposing of claims of citizens of the United States could hardly be so regarded. The international claims of an individual are only inchoate rights dependent on governmental policy, so their surrender or compromise is not a decision on a question of legal right (*Comegys v. Vasse*, 1 Pet. 193 (1828); *Meade v. U. S.*, 9 Wall. 691), although with the establishment of an international court such claims might become legal rights.

⁹⁴ *Supra*, notes 37-42.

⁹⁵ As treaties are "the supreme law of the land," by Art. 6, sec. 2 of the Constitution, they form a rule of decision *ex propria vigore* unless supplementary congressional legislation is required for special reasons. *Supra*, notes 88 and 89.

⁹⁶ For. Rel. 1909, p. 303.

claim might be brought there against the United States "in the form of an action in damages for the injury caused by the capture." This suggestion was adopted by the Naval Conference in a final protocol⁹⁷ and was ultimately incorporated in a protocol⁹⁸ signed by all signatories of the original Prize Court Convention.

The Committee of the London Naval Conference reported the constitutional difficulty as follows:⁹⁹

The (American) delegation remarked that for certain states the functioning of the International Prize Court is not compatible with that of the Constitution. The decision of national courts cannot be annulled by foreign decisions in certain countries, such as the United States of America. Recourse to the Prize Court might have the effect of annulling a decision of the Supreme Court of the United States of America, a result incompatible with their Constitution.

The option permitted by the protocol would eliminate this possibility, but it seems probable that the difficulty might have been equally met by domestic legislation allowing appeal direct from an inferior Federal court to the international court.¹⁰⁰

It is clear that "the judicial power of the United States" cannot refer to the jurisdiction exercised by all courts organized under authority of the national government, for provisions of the article in reference to the tenure of judges have never been adhered to in territorial¹⁰¹ or consular courts.¹⁰² The article evidently applies only to Federal courts

⁹⁷ For. Rel. 1909, p. 318; Report of United States Delegation, *ibid.*, p. 305, and President Taft's message, Dec. 6, 1910, *ibid.*, 1910, p. viii.

⁹⁸ Charles, *Treaties*, p. 263. Neither the protocol nor the original convention has been ratified, though ratification was advised by the Senate on Feb. 15, 1911.

⁹⁹ Proceedings London Naval Conference, British Parl. Pap., Misc. No. 5 (1909), p. 222. See American statement, *ibid.*, p. 216.

¹⁰⁰ Art. 6 of the International Prize Court Convention provides that "the municipal law of the belligerent captor shall decide whether the case may be brought before the international court after judgment has been given in first instance or only after an appeal."

¹⁰¹ *American Insurance Co. v. Canter*, 1 Pet. 511.

¹⁰² *In re Ross*, 140 U. S. 453. General and special treaties requiring submission of the government to the decision of an international arbitration court have never been questioned on the score of delegation of *judicial* power, yet, according to President Taft, such courts exercise judicial power. "A submission to a judicial decision is not a delegation of power to an agent. It is a submission of an issue to a judge." *Enforced Peace*, p. 61.

within the territory of the States of the Union, but even with this limitation it cannot mean that the judicial power described in Article III, section 2, is lodged *exclusively* in courts organized according to Article III, section 1, for the State courts exercise such jurisdiction concurrently, except where expressly prohibited by Congress,¹⁰³ and foreign consuls, under treaties, sometimes exercise exclusive jurisdiction in admiralty and maritime cases relating to the internal order of their merchant vessels and not affecting the peace of the port.¹⁰⁴

Consequently, there appears to be nothing in this article which would prevent an international court (which the treaty power is clearly competent to organize) from exercising jurisdiction in the matters enumerated in Article III, section 2, concurrently with the Federal courts (as the State courts do habitually).

The only difficulty remaining is that of appeals from the Federal courts to the international court. Congress has entire control of the jurisdiction of inferior Federal courts and is competent to withhold any part of the judicial power of Article III, section 2, allowing it to remain with the State courts.¹⁰⁵ It also exercises complete control of the appellate jurisdiction of the Supreme Court.¹⁰⁶ Only the original jurisdiction of the Supreme Court is inherent,¹⁰⁷ and even that may be vested concurrently in other courts.¹⁰⁸ An appeal from the Supreme Court to

¹⁰³ This is a necessary implication of Art. 6, sec. 2. "This Constitution, and the laws of the United States . . . and all treaties . . . shall be the supreme law of the land, and the judges in every State shall be bound thereby." See also the *Federalist*, No. 82. (Hamilton.)

¹⁰⁴ *Supra*, note 38. The *Elwine Kreplin*, Fed. Cas. 4426 (1872); The *Welhaven*, 55 Fed. 80, (1892); The *Bound Brook*, 146 Fed. 160 (1906); The *Königin Luise*, 184 Fed. 170 (1910); Moore, 2: 298; Consular Regulations (1896), 88-90.

¹⁰⁵ J. P. Hall, Constitutional Law, sec. 356.

¹⁰⁶ The entire jurisdiction of the Supreme Court is theoretically inherent, but the appellate jurisdiction is subject "to such exceptions and regulations as the Congress shall make." (Art. 3, sec. 2, cl. 2.) As Congress has from the first exercised this power affirmatively, it has been implied that all jurisdiction not specifically granted is "excepted" by Congress, hence the appellate jurisdiction in fact exists only where expressly granted by Congress. (U. S. v. Moore, 3 Cranch 159, 170; *Durousseau v. U. S.*, 6 Cranch 307, 313; *Ex parte McCardle*, 7 Wall. 506, 513.)

¹⁰⁷ *Kentucky v. Dennison*, 24 How. 66.

¹⁰⁸ Inferior Federal courts and State courts may exercise original jurisdiction in cases brought by diplomatic ministers and consuls (Judicial Code, 1911, secs. 233,

an international court would seem anomalous from a linguistic standpoint at least,¹⁰⁹ but legislation providing that in certain classes of cases appeals should go from inferior Federal courts to an international court¹¹⁰ instead of to the Supreme Court would seem entirely within the competence of Congress.

A system whereby all cases involving international law or treaties should be adjudicated in first instance in an inferior Federal court with appeal to an international court would seem to present no unconstitutional conflict with the judicial power of the United States, and, in view of the reciprocal advantages which such a system might offer to American citizens, would seem within the proper scope of treaty-making and hence within the constitutional competence of the treaty power. Congress would have to amend the Judicial Code before such a system could operate, but its political obligation to render a treaty of this character executable would seem the same as with the many other treaties requiring supplementary legislation.

There appears to be general agreement that the *sine qua non* of an improved world organization is the establishment of an international

256, cl. 8) and the former in cases against consuls (*ibid.*, sec. 24, par. 18; sec. 233; *Bors v. Preston*, 111 U. S. 252). From 1875 to 1911 State courts exercised concurrent jurisdiction in cases against consuls (18 Stat. 318; *Wilcox v. Luco*, 118 Cal. 639 (1898); Judicial Code, 1911, sec. 256, par. 8). Yet the Constitution gives the Supreme Court original jurisdiction "In all cases affecting ambassadors, other public ministers and consuls." (Art. 3, sec. 2, cl. 2.)

¹⁰⁹ Though in New York the "Supreme Court" is not the highest appellate court, and in all the States appeal lies from the State "supreme" court to the United States Supreme Court. The latter was contested in the extended controversy between John Marshall and Virginia, in which the State, although admitting that cases within national judicial power could be transferred from inferior State to inferior Federal courts, maintained that appeals could not go from the highest State court to the Supreme Court of the United States. Marshall's position, sustaining the constitutionality of Article 25 of the Judicial Code of 1789 (virtually repeated in the Judicial Code of 1911, sec. 237), providing for such appeals, has been uniformly followed. *Martin v. Hunter*, 1 Wheat. 304; *Cohen v. Virginia*, 6 Wheat. 406; *W. E. Dodd, John Marshall and Virginia*, *Am. Hist. Rev.*, 12: 776.

¹¹⁰ If the subject were within the original jurisdiction of the Supreme Court, an original jurisdiction in an inferior Federal court with appeal to the international court could be provided concurrently with the inherent original jurisdiction of the Supreme Court. Thus appeal to the international court would be optional with the parties.

court. The stability of such a court and its capacity to define and develop international law would seem much greater if its jurisdiction were founded in part upon the nature of the case^{110a} rather than entirely upon the nature of the *parties*, as has been usually suggested.¹¹¹ A case between states is very likely to involve questions of national honor or national policies, and decision on purely judicial grounds without considerations of expediency is frequently found impossible. Thus Borchard, in arguing for an international court with final jurisdiction over pecuniary claims against states, brought by individuals, says:¹¹²

The divorce of pecuniary claims from political considerations, a union which now not only results in inexact justice, but often gross injustice, and the submission of such claims to the determination of an independent tribunal, must make a universal appeal to man's sentiment for justice.

The most far-reaching questions of international law, customary or conventional, may be involved in controversies between private individuals, either of the same or of different nationalities, or between individuals and a state. With an international court exercising appellate jurisdiction in all cases involving international law or treaty,¹¹³ judicial determination of these questions could frequently be obtained in the routine of an established institution, with comparatively little danger of arousing national susceptibilities. The way would thus be open for

^{110a} Jurisdiction is primarily dependent upon the nature of the case in the proposed International Prize Court (XII Hague Convention, 1907, Arts. 3, 4, 5; Charles, *Treaties*, p. 250) and in the Central American Court of Justice, 1907 (Arts. 2, 3; Malloy, p. 2399).

¹¹¹ Jurisdiction of cases where both parties were states was alone provided in the draft Convention for the Creation of a Judicial Arbitration Court, The Hague, 1907, Arts. 17, 21.

¹¹² E. M. Borchard, *The Diplomatic Protection of Citizens Abroad*, New York, 1915, p. 864. See also pp. 328, 373, 443, and in *The New Republic*, 7: 196 (June 24, 1916).

¹¹³ The jurisdiction would, of course, have to be defined in detail. Cases of pecuniary claims by aliens; private rights upon succession of sovereignties; maritime cases involving the general law, such as salvage and collision, prize captures and piracy; cases involving the privileges of sovereigns, diplomatic, consular, naval and military officers; cases of territorial boundaries, jurisdictional limits, and extra-territorial jurisdiction, and all cases involving the interpretation of treaties, are some of the classes which might be included.

gradually building up a series of binding and authoritative precedents on numerous questions of international law, and when controversies between nations arose there would be considerable probability that the question had already been so covered by decided precedents that it would furnish neither a *bona fide* clash of opinion nor an excuse for veiling political aims.

The merit of such an international court, as compared with a court exercising jurisdiction only in cases between states, is evidenced by the actual jurisdiction exercised by the Supreme Court of the United States.¹¹⁴ As compared with the number of cases which come before the Supreme Court because involving the Constitution, laws or treaties of the United States, or admiralty and maritime law the number is insignificant which come before it because the parties are States of the Union or persons of different States, and it is its authoritative interpretations of the Federal Constitution, national statutes, treaties, and maritime law which has made the Supreme Court an institution of remarkable value.

The logic of making jurisdiction dependent upon the *case* rather than the *parties* was recognized in the International Prize Court Convention, but the expedient adopted by the United States in the protocol would seem to sacrifice some of this advantage, for the intervention of sovereignties, with the continual possibility of arousing susceptibilities, is the very thing to be avoided. If the interpretation here suggested is correct, there seems to be no constitutional obstacle to considering such a court.

TREATY POWER AND EXECUTIVE POWER

A conflict between treaties and the executive power, which, according to the Constitution,¹¹⁵ is vested in the President of the United States, has never been seriously considered,¹¹⁶ and such a conflict seems impos-

¹¹⁴ For distinction of the jurisdiction of the Supreme Court as determined by the character of the case and by the character of the parties, see *Cohen v. Virginia*, 6 Wheat. 264, 378, 393; *U. S. v. Texas*, 143 U. S. 621 (1891); *Kansas v. Colorado*, 185 U. S. 125.

¹¹⁵ Art. 1, sec. 1, cl. 1.

¹¹⁶ The Senate report on the Taft arbitration treaties of 1911, in defending the prerogatives of the Senate, says: "It is said that the powers of the President under the Constitution are given up by the 3d clause of Article 3, just as much as those

sible until a legal distinction between the functions of the Executive and the treaty power is formulated. Executive discretion in both political¹¹⁷ and administrative¹¹⁸ matters has undoubtedly been limited by numerous treaty provisions.

The competence of the treaty-making power to delegate its own discretion has, however, been doubted.¹¹⁹ Thus, in international arbitration parties, the Senate has generally insisted upon its prerogative, as a constituent of the treaty power, to participate in the conclusion of each *compromis* submitting a specific case to arbitration.¹²⁰ In refusing consent to the ratification of the provision of the Taft arbitration treaties of 1911 which gave final decision upon the question of justiciability to a joint high commission, the majority of the Senate Committee on Foreign Relations reported:¹²¹

This recommendation is made because there can be no question that, though the machinery of the joint commission, as provided in Articles II and III and with the last clause of Article III included, the Senate is deprived of its constituent power to pass upon all questions involved in any treaty submitted to it in accordance with the Constitution. The committee believes that it would be a violation of the Constitution of the United States to confer upon an outside commission, powers which, under the Constitution, devolve upon the Senate. . . . To vest in an outside commission the power to say finally what the treaty means by its very general and indefinite language is to vest in that commission the power to make for us an entirely different treaty from that which we supposed ourselves to be making.

of the Senate. If this is true it only makes the case more serious, but the President, under the provisions of Articles 2 and 3, although he would be bound by the decision of the Commission, can nevertheless control the formation of that body." Cong. Rec. 47: 3935, and 62d Cong., 1st. sess., S. Doc. 98, pp. 5-6.

¹¹⁷ As in arbitration and peace treaties.

¹¹⁸ As in treaties establishing international administrative unions, for postal, telegraphic and radio service, sanitary inspection, etc.

¹¹⁹ The well-known principle that Congress cannot delegate legislative power (*Field v. Clark*, 143 U. S. 649) is founded on the provision that "all legislative powers herein granted shall be vested in a Congress" (Art. 1, sec. 1). There is no specific provision prohibiting a delegation of *treaty-making* power.

¹²⁰ The arbitration treaties negotiated in 1904 were withdrawn because of the Senate's insistence on this point, and in the treaties of 1908 it was expressly provided that the *compromis* be made by the President "by and with the advice and consent of the Senate." (Art. 2.) See also reservations to I and II Hague Conventions, 1907. (Malloy, pp. 2247, 2259.)

¹²¹ Cong. Rec., 47: 3935; also 62d Cong., 1st. sess., S. Doc. 98, p. 6.

A logical carrying out of this theory would seem to deny any power to conclude treaties in good faith, for all treaties require interpretation, and to say that the interpretation must always be according to the will of the existing treaty-making power of the United States, however that may differ from the intent of the original negotiation, is virtually to substitute political expediency for treaty obligation. Good faith would seem to require that the true intent of the instrument govern its application through its entire life, and it is hard to see where a more impartial determination of what this intent was could be obtained than in an international tribunal.¹²²

The minority report of the Senate committee,¹²³ in which Senator Root had a hand, pointed out that the majority view could "not be maintained except on the theory that all general treaties of arbitration" involve a like unconstitutional delegation of power, the only difference being that the treaties under consideration submitted "certain described classes" of cases to arbitration, instead of particular cases. The decision of the joint high commission on what questions are justiciable "is not delegating to a commission power to say what shall be arbitrated;

¹²² W. Kaufmann (*Die Rechtskraft des Internationalen Rechtes*, Stuttgart, 1899, p. 102) calls attention to the necessity that treaties be interpreted from an international rather than a national standpoint, and the courts have held in France that "no nation has the right to interpret to its advantage the obscure provisions of a treaty or to delegate such examination to its courts. . . . The interpretation of a treaty in case of difficulty can result only from a reciprocal agreement of the two governments." (Dalloz, *Juris. Gen., Supt.*, t. 17 (1896), s. v. *Traité Int.*, No. 14.) American courts have generally interpreted treaties on legal principles (*U. S. v. Rauscher*, 119 U. S. 407, 419), but in interpreting "political questions" have followed the legislative and executive departments (*Foster v. Neilson*, 2 Pet. 203, 308), though not if manifestly contrary to the true intent of the instrument. (*Castro v. De Uriarte*, 16 Fed. 93.) See also S. E. Baldwin, *Am. Law Rev.*, 35: 222; Wharton, 2: sec. 133.) The German *Reichsgericht* refused to interpret an Italian commercial treaty with reference to analogous provisions of earlier treaties, but held that "the interpretation of the individual provisions (of treaties) permits the *autonomy* of the state" which executes it. (*Urtheil des Deutsches Reichsgerichts*, Feb. 15, 1892, *Ent., Str.* 22: 372.)

¹²³ 62d Cong., 1st. sess., S. Doc. 98, p. 9. This report was signed by Senators Root and Cullom. In a special minority report, Senator Burton pointed out that even after decision by the joint high commission the *compromis* would go to the Senate. "In such case, as in every other case, it would be within the power of the Senate to refuse its advice and consent to the special agreement, but it would be contrary to its treaty obligation." *Ibid.*, p. 12.

it is merely empowering the commission to find whether the particular case is one that the United States have said shall be arbitrated." Legal opinion has generally subscribed to this view,¹²⁴ and the fact that the Senate advised ratification¹²⁵ of the International Prize Court Convention, with its supplementary protocol, which subjected the United States to the jurisdiction of the International Prize Court in defined classes of cases without even the conclusion of a preliminary *compromis*, indicates that the constitutional difficulty is not insuperable. A remarkable delegation of the discretion of the authority controlling the foreign relations of the country has been ratified by the treaty-making power in the twenty-odd Wilson-Bryan Peace Treaties concluded since 1914, according to which "all disputes . . . of every nature whatsoever, which diplomacy shall fail to adjust" would have to be submitted to an international commission, with power to consider for a year and report, before hostile action could be taken.¹²⁶

CONCLUSION

It appears that the principle of separation of powers imposes no limitation upon the treaty-making power. If the subject is appropriate for treaty negotiation, consonant with the purposes of the Constitution, and in violation of none of its specific prohibitions, the treaty, if ratified, is valid, and all other departments of government, — the legislative, executive, and judiciary, are bound by their allegiance to the Constitution to perform the acts necessary to give it effect.¹²⁷ Con-

¹²⁴ J. B. Moore, *Independent*, Aug. 8, 1911, cited by Senator Burton, *supra*, note 123. President Taft has said: "In the discussion of the general arbitration treaties in the Senate, there was a suggestion that the agreement to submit to a court questions which had not yet arisen described by definition and classification, with power in the court to take jurisdiction, was more of a delegation of power than the mere submission of an existing question to arbitrators. There is, however, not the slightest difference in principle between the two. If one is a delegation, the other is. If one is invalid, the other is; and if one is not invalid, the other is not." (Enforced Peace, p. 61.)

¹²⁵ On Feb. 15, 1911, Charles, *Treaties*, p. 248.

¹²⁶ G. G. Wilson, *The Monroe Doctrine and the League to Enforce Peace*. (Enforced Peace, p. 72.)

¹²⁷ "The Government of the United States presumes that whenever a treaty has been duly concluded and ratified by the acknowledged authorities competent

sidering the practical working of the government, this capacity of the treaty power to impose obligations upon the other independent departments is not remarkable. Practically every valid act of one department does the same. Every constitutional Act of Congress imposes an obligation upon the President to enforce and the courts to apply it. Every decision of the courts imposes an obligation upon the President to execute it, and if upon a constitutional question, upon Congress to recognize it in future legislation; while political acts of the President, such as recognition of foreign states, insurrection, or belligerency, impose an obligation upon the courts to conform their decisions thereto.¹²⁸

Where the coöperation of another department is required it would always be appropriate for the treaty power itself to consider the opinion of the departments concerned, especially if the prerogatives of Congress are involved, before ratifying the treaty, but such action would seem to be dictated by courtesy or expediency rather than legal necessity. The doubt of the competence of the treaty power in this connection has been attributed by President Taft to a "failure to analyze the differences between the creation of an obligation of the United States to do a thing and the due, orderly, and constitutional course to be taken by it in doing that which it has agreed to do."¹²⁹

for that purpose, an obligation is thereby imposed upon each and every department of the government to carry it into complete effect, according to its terms, and that on the performance of this obligation consists the due observance of good faith among nations." Mr. Livingston, Sec. of State, to Mr. Serurier, June 3, 1833, Wharton, 2: 67. A similar view was expressed by the French *Conseil d'État* in 1839: "The execution (of treaties) . . . devolves not on a single authority, but on all, according to their competence. The execution belongs to diplomacy, when a principal treaty demands accessory conventions. . . . The execution can be confided to the army if it can be accomplished no other way. . . . The execution will be political if it concerns a treaty of alliance or an act of mediation. It can require the coöperation of the administration, if the acts are of that kind. Thus, for example, postal conventions will be executed under direction of the postal department. It must be finally admitted that the judicial authority will have its part in the execution of treaties, if on occasion there arise private controversies which are in its competence, such as questions of property, of family, of succession, or others of that kind." Dalloz, *Juris. Gen.*, Rept., t. 42, s. *v. Traité Int.* No. 131.

¹²⁸ *Williams v. Suffolk Insurance Co.*, 13 Pet. 415 (1839); *Jones v. U. S.*, 137 U. S. 202 (1890); *The Prize Cases*, 2 Black 635 (1862).

¹²⁹ Constitutionality of the Program of the League to Enforce Peace. (Enforced Peace, p. 67.)

The only limitation upon the treaty power is found in the *ends* for which it acts. The *means* of performance specified in the Constitution must be observed in this as in all other governmental activity, but the necessity of such observance is no impeachment of the validity of the instrument and furnishes no license for a refusal to act by the organs whose coöperation is required.

QUINCY WRIGHT.

VIOLETION OF TREATIES BY ADVERSE NATIONAL ACTION

THE shade of distinction sought to be shown by the title of this paper may require explanation. Imperfect wording involves either carelessness or ignorance; bad faith indicates dishonesty; nonexecution or disregard implies laxness in the government, if not carelessness; adverse or hostile municipal or judicial action connotes lack of coordination between the internal and external affairs of the State. It follows that such adverse action may be considered from a practical point of view as almost a normal kind of violence against international contracts. It is not to be excused on that account, but it may be considered as a frictional incident almost inseparable under some conditions from the existence of a State. Given either a government of definitely separated elements, such as the United States, or a government without much stability, or a State founded on a type of civilization different from the European order, and this sort of violation of treaty may be forecasted with certainty. Fortunately, however, the instances that cause contractual friction of this sort are of the grosser kinds of personal violence, or are commercial; they are not of a political character, cannot be said to involve policy, and only by a stretch of the imagination involve the tweedledum and tweedledee of international relations, "national honor and vital interest." They are consequently extremely susceptible to simple and orderly solution.

One may doubt if any governmental machine is quite as capable of producing friction of this kind as that of the United States. In the case of treaties which bind the government there is no trouble at all if the subject-matter lies outside the legislative power of Congress. But on common interests Congress can vitiate a treaty by passing a subsequent statute, though the executive can forthwith vitiate the statute by another and later treaty; which is a game of seesaw not

ordinarily worth playing. As to the Federal States, there is a complication. Logically, any plea in any case that a treaty was violated or affected should, under technical restrictions, serve to secure a change of venue to the Federal system of courts. As a matter of fact, only tort cases are certainly cognizable in the Federal courts. If, however, a case involves a treaty and the supreme court of a State has passed on it, the Supreme Court of the United States is now able to take jurisdiction.¹ This probably renders it possible to secure a hearing for criminal cases in violation of treaty rights before the Supreme Court.² Suits in law or equity are subject to the provisions of the Eleventh Amendment and are the subjects of rules in the Judicial Code.

Under the American constitutional system, violation of treaties is upheld by the courts if it occurs within certain bounds. Article VI of the Articles of Confederation³ provided:

No State, without the consent of the United States in Congress assembled, shall . . . enter into any conference, agreement, alliance or treaty with any king, prince or state. . . .

No two or more States shall enter into any treaty, confederation

¹ Judicial Code, sec. 237, as amended by Public No. 224, 63d Cong., approved December 23, 1914.

² On this subject see William H. Taft, *The United States and Peace*, 40-89.

³ Under the Articles of Confederation, between 1776 and 1789, fourteen treaties were negotiated by the United States as follows: France, alliance, and secret article, February 6, 1778; France, amity and commerce, February 6, 1778; France, contract for the repayment of loans, July 16, 1782; France, contract for a new loan and the repayment of the old loans, February 25, 1783; France, consular, November 14, 1788; Great Britain, provisional treaty of peace, November 30, 1782; Great Britain, armistice, January 20, 1783; Great Britain, definitive treaty of peace, September 3, 1783; Morocco, peace and friendship, January, 1787; Netherlands, peace and commerce, October 8, 1782; Morocco, relative to recaptured vessels, October 8, 1782; Prussia, amity and commerce, September 10, 1785; Sweden, amity and commerce, April 3, 1783. Authenticated instances of violation under the régime of the Articles of Confederation have not been found, and it is probable that the complaint of the statesmen was directed at a theory, not a condition; but see Curtis, *Constitutional History of the United States*, I, 168-174. For matters of dispute relating to these treaties see for: France, Moore, *Digest*, V, 586-615; Great Britain, *ibid.*, 621-699; Netherlands, J. C. B. Davis' *Treaty Notes* (1776-1887), 1360; Prussia, Moore, *ibid.*, 617-618; Sweden, *ibid.*, 864-865. Federal cases involving treaty provisions will be found in the later treaty volumes listed as notes to the treaty texts.

or alliance whatever between them, without the consent of the United States in Congress assembled, specifying accurately the purpose for which the same is to be entered into, and how long it shall continue.

This was not a successful solution. "The treaties of the United States, under the present confederation, are liable to the infraction of thirteen different legislatures and as many different courts of final jurisdiction, acting under the authority of these legislatures," said the *Federalist*.⁴ "We are a nation to-day and thirteen to-morrow. Who will treat with us on such terms?" asked Washington. No cases, however, seem to have actually arisen under the Confederation.

The Constitution contains these stipulations:

Art. I, sec. X, 1. No State shall enter into any treaty, alliance, or confederation.

3. No State shall, without the consent of Congress, . . . enter into any agreement or compact with another State, or with a foreign power.

Art. II, sec. II, 2. He [the President] shall have power, by and with the consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.

Art. VI, 2. This Constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The most recent writer on the subject⁵ considers these two questions:

1. "When a treaty deals with a subject upon which Congress is authorized to legislate, is such a treaty valid? or perhaps we should rather ask, What is its status?" After examining the decisions in order,⁶

⁴ No. 22.

⁵ Charles H. Burr, *The Treaty-making Power of the United States and the Methods of its Enforcement as affecting the Police Power of the States*, Proceedings of American Philosophical Society, LI, No. 206. Quotations from pp. 283, 325, 327 and 356.

⁶ The cases considered are: *United States v. Schooner Peggy*, 1 Cranch 103 (1802); *Foster & Elam v. Neilson*, 2 Peters 253 (1829); *United States v. Percheman*, 7 Peters 51 (1833); *Strother v. Lucas*, 12 Peters 410 (1838); *Garcia v. Lee*, 12 Peters 511 (1838); *Pollard v. Kibbe*, 14 Peters 353 (1840); *Taylor v. Morton*, 2 Curtis 454 (1853); *The Cherokee Tobacco*, 11 Wall. 616 (1870); *United States v. 43 Gallons of Whiskey*, 93 U. S. 188 (1876); *The Head Money Cases*, 112 U. S. 584 (1884);

he concludes that if a treaty is self-executing it is then to have the force of an Act of Congress. "If a treaty be neither of wholly national import nor executory in its nature, and assume to create and declare individual rights and obligations, then those rights and obligations must, if the treaty itself is to have the force of law, have the same validity as though created by legislative action and receive recognition in the courts."

2. "When a treaty deals with the subjects upon which the States as opposed to Congress are authorized to legislate, is such treaty valid? or rather, what is its status?" Reviewing the decisions in order,⁷ he finds that "no case has ever in the history of the United States been decided, which holds, for any reason or under any conditions, a treaty provision to be subordinate to a State law or State right."

He concludes, after examining State police powers and methods of enforcement in relation thereto, that "a violation of rights secured by treaty provisions may be made punishable under the laws of the United States, suppressed by its armies or enjoined in its courts."⁸ This is possible only, and depends on the good will of the nation to be made effective.

In *Whitney v. Robertson*, 124 U. S. 190, Mr. Justice Field said as to treaties not self-executing:

If the country with which the treaty is made is dissatisfied with the action of the legislative department, it may present its complaint to the executive head of the government, and take such other measures as it may deem essential for the protection of its interests. The courts can afford no redress. Whether the complaining nation has just

United States v. Rauscher, 119 U. S. 407 (1886); *Bartram v. Robinson*, 122 U. S. 116 (1887); *Whitney v. Robertson*, 124 U. S. 190 (1888); *Chae Chan Ping v. United States*, 130 U. S. 581 (1889); *Nishimura Ekiu v. United States*, 142 U. S. 651 (1892); *United States v. Lee Yen Tai*, 185 U. S. 213 (1902); *Johnson v. Browne*, 205 U. S. 309 (1907); *Fok Yung Yo v. United States*, 185 U. S. 296 (1902); *Baldwin v. Franks*, 120 U. S. 678 (1887).

⁷ The cases considered are: *Ware v. Hylton*, 3 Dallas 199 (1796); *Clerke v. Harwoode*, 3 Dallas 342 (1797); *Fairfax v. Hunter*, 7 Cranch 603 (1812); *Chirac v. Chirac*, 2 Wheat. 259 (1817); *Orr v. Hodgson*, 4 Wheat. 453 (1819); *Hughes v. Edwards*, 9 Wheat. 489 (1824); *Carneal v. Banks*, 10 Wheat. 181 (1825); *Worcester v. The State of Georgia*, 6 Peters 515 (1832); *Hauenstein v. Lynham*, 100 U. S. 483 (1879); *Maiorano v. B. & O. R. R. Co.*, 213 U. S. 268 (1909).

⁸ *Burr, op. cit.*, 398.

cause of complaint, or our country was justified in its legislation, are not matters for judicial cognizance. In *Taylor v. Morton*, 2 Curtis, 454, 459, this subject was very elaborately considered at the circuit by Mr. Justice Curtis of this court, and he held that whether a treaty with a foreign sovereign had been violated by him; whether the consideration of a particular stipulation of the treaty had been voluntarily withdrawn by one party so that it was no longer obligatory on the other; whether the views and acts of a foreign sovereign had given just occasion to the legislative department of our government to withhold the execution of a promise contained in a treaty, or to act in direct contravention of such promise, were not judicial questions; that the power to determine these matters had not been confided to the judiciary, which has no suitable means to exercise it, but to the executive and legislative departments of our government; and that they belong to diplomacy and legislation, and not to the administration of the laws. . . .

. . . The duty of the courts is to construe and give effect to the latest expression of the sovereign will. In *Head Money Cases*, 112 U. S. 580, it was objected to an Act of Congress that it violated provisions contained in treaties with foreign nations, but the court replied that so far as the provisions of the Act were in conflict with any treaty, they must prevail in all the courts of the country; and after a full and elaborate consideration of the subject, it held that "so far as a treaty made by the United States with any foreign nation can be the subject of judicial cognizance in the courts of this country, it is subject to such Acts as Congress may pass for its enforcement, modification or repeal."⁹

"It goes without saying that mere international comity not incorporated in any convention between the United States and a foreign Power must yield to a statute with which it is in conflict," said Bradford, District Judge, in *The Kestor*, 110 Fed. 432, 448. That is tantamount to saying that a statute prevails over the considerable part of international law which gains its force from usage and the fixed customs of nations. A statute, for instance, abolishing diplomatic ranks would presumably prevail over the treaties of 1815 and 1856, to which the United States was not a party but which are firmly established as part of the nonconventional international law of this country and are observed by all nations. But the danger of the theory is not met in practice, for diplomacy can adjust such difficulties. Secretary Cass, in a note to Minister Forsyth at Mexico City, of June 23, 1858, indi-

⁹ See also *Chae Chan Ping v. United States* (The Chinese Exclusion Case), 130 U. S. 581.

ated what would happen in such a case when he wrote: "The imposition by Mexico of a tax unduly discriminating against citizens of the United States, if not a breach of the treaty between the United States and Mexico, is an unfriendly act to be noticed by the United States."

The following excerpts from the Act of March 3, 1911, relating to the judiciary, seem to indicate the jurisdiction of Federal courts as to treaties:

Sec. 24. The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, . . . where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign states, citizens, or subjects.

Second. Of all crimes and offenses cognizable under the authority of the United States.

Seventeenth. Of all suits brought by any alien for a tort only, in violation of the laws of nations or of a treaty of the United States.

Sec. 233. The Supreme Court shall have exclusive jurisdiction of all controversies of a civil nature where a State is a party, except between a State and its citizens, or between a State and citizens of other States, or aliens, in which latter cases it shall have original, but not exclusive, jurisdiction.

Sec. 237. A final judgment or decree in any suit in the highest court of the State in which a decision could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege or immunity is claimed under the Constitution or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission or authority, may be re-examined and reversed, or affirmed in the Supreme Court upon a writ of error. . . .

It shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the

Supreme Court, although the decision in such case may have been in favor of the validity of the treaty or statute or authority exercised under the United States or may have been against the validity of the State statute or authority claimed to be repugnant to the Constitution, treaties, or laws of the United States, or in favor of the title, right, privilege, or immunity claimed under the Constitution, treaty, statute, commission, or authority of the United States.

This subject is one considerably studied already,¹⁰ and it is perhaps sufficient here to close discussion of it with a summary of the rules which have been established by practice. These are:

1. No State, either by provisions of its constitution or statutes, can prevail over a treaty, though any State is able to condemn the provisions of a treaty in criminal affairs without the United States being able to secure justice in it short of resort to force.

2. Federal statutes and treaties are of equal force as laws, and violation of a treaty may occur by the passage of a later adverse statute.¹¹ This rule works both ways, and a later treaty will prevail over an earlier statute.

The British custom is better than the American, which is the result of what might be called a fault in the Constitution. "When an Act of the English Parliament is passed, the rights under treaties are always reserved. We express this by saying that in such cases *salvo regis jure*."¹²

¹⁰ See Westel Woodbury Willoughby, *The Constitutional Law of the United States*, Chaps. XXXIV-XXXV; Charles Henry Butler, *The Treaty-making Power of the United States*, II, 1-148; Samuel B. Crandall, *Treaties, their Making and Enforcement*; Devlin, *Treaty Power of the United States*.

¹¹ Butler (II, 86) cites the following cases in which the Supreme Court has sustained the supersession of prior treaties in conflict with later statutes: *United States v. McBratney*, 104 U. S. 621; *Chew Heong v. United States*, 112 U. S. 562; *Ward v. Race Horse*, 163 U. S. 504; *Draper v. United States*, 164 U. S. 240; *Thomas v. Gay*, 169 U. S. 264; *Fong Yue Ting v. United States*, 149 U. S. 698; *Chinese Exclusion Cases*, 139 U. S. 581; *La Abra Mining Co. v. United States*, 175 U. S. 423; *United States v. Gue Lim*, 176 U. S. 459.

¹² Sir Edwin Pears, *For. Rel.*, 1908, 743. But see Ernst Meier, *Ueber den Abschluss von Staatsverträgen* (Leipzig, 1874), 116-126, citing Hansard, CXCIX, 324, 330; CLVI, 1361, 1397; CLII, 1439, 1380, 1387, 2003, 1422, 1429; CLVII, 1361. On the whole subject as to England, see Alpheus Todd, *On Parliamentary Government in England* (London, 1887), I, 365-373, "The right of making treaties." Consult also Zoepff's *Das Zustimmungsrecht der Landstände zu staatsrechtlichen Verträgen* (Freiburg, 1860).

Speaking generally, this is the continental method of protecting treaties from exigencies within the State.¹³ In this conception a treaty outranks a statute, though doubt is frequently removed on the Continent by passing the treaty also as a law or decree.

In Switzerland a somewhat different system maintains, in itself unlike the European scheme of embodying a treaty in a law. Switzerland is not only a State, but a series of states.¹⁴ The Constitution provides:

Art 7. Every individual alliance and every treaty of a political character between Cantons is prohibited.

In return, the Cantons have the right to conclude between themselves conventions on matters of legislation, administration or justice; however, they must bring them to the notice of the Federal authority which, if these conventions involve anything contrary to the Confederation or to the rights of other Cantons, is authorized to prevent their execution. In the contrary case, the contracting Cantons are authorized to claim for execution the coöperation of the Federal authorities.

Art. 85. Matters in the competence of the two councils (national and cantonal) are notably the following:

5. Alliances and treaties with foreign States, as well as the approval of the treaties of Cantons between themselves or with foreign States; however, the treaties of Cantons are brought before the Federal Assembly only when the Federal Council or another Canton raises reclamations.

Art. 113. . . . The Federal tribunal will apply the laws voted by the Federal Assembly and the decrees of this assembly which have a

¹³ See French constitutional law of July 16-18, 1875, Art. 8; German Constitution, Art. 11; Austrian fundamental laws, sec. 1, a.

"In the confederation each State guards the capacity to treat on points which are not confided to the common authority by part of the confederation (Act of Germanic confederation of June 9, 1818, Art. 11, sec. 2). In the present Federal German Empire, the character of which is mixed, each State may pass treaties on matters which do not enter the domain of the common legislation of all the empire or which have been formally reserved (German Constitution, Art. 4, No. 11, arts. 52 and 66; convention of November 23, 1870, Art. 2, with Bavaria)." — Despagnet, *Droit international*, 487.

"The obligation of observing the Pact is extinguished simultaneously with the entry into vigor of the new constitutional law, and the State which promulgates it cannot be regarded as admitting exceptions to its application in any sense." — Olivi, *Sull'estinzione dei trattati internazionali*, 34.

¹⁴ Max Huber, *The Intercantonal Law of Switzerland*. This JOURNAL, Vol. 3, p. 62.

general character. It will also conform to the treaties which the Federal Assembly shall have ratified.

In case a Canton should require coercion, the Federal Council withholds the subsidies due it, and sends troops, who are peaceably quartered at its expense and literally eat it into submission, a method very effective with the frugal Swiss. My recollection is that the method has been employed but once, and then speedily got results.

The type of violation now under examination is the most frequent at the present time and it never can be entirely avoided any more than differences between individuals as to their contracts can ever be entirely avoided. But the system of international relations is sufficiently developed for violations of this kind normally to be taken care of through claims proceedings, arbitrations, or indemnities in instances of a violent character. A characteristic of this type of violation is that it has become more frequent as international relations have become more complicated, and especially as nationals have settled more in foreign countries. These are modern conditions and it can almost be said that violation by adverse action, law, or judgment is a development of the last century.

Of numerous instances a large variety are described herewith in chronological order.

A. PRIOR TO 1848

1. Following the Treaty of Nymwegen, Louis XIV invented the *Chambres des réunions* to examine the nature and extent of the cessions which had been made to him by the Treaties of Westphalia, the Pyrenees, and Nymwegen. From 1680 these chambers had been sitting at Metz, Besançon, and Brisach, and by this new method of making conquests a number of cities, seigneuries, and fiefs had been adjudged to be his or dependencies of the three bishoprics of Metz, Toul, and Verdun. Then he reached Alsace, Franche Comté, and the Netherlands, in all of which Spain had ceded to him territory by the preceding treaties. This practice was repugnant to the principle advanced by France at the Congress of Westphalia and contrary to German public law, which distinguished the vassal lien from that of subjection. Louis was particularly interested in Alsace, over which he

claimed full sovereignty through the decisions of the *Chambres des réunions* by virtue of secs. 73 and 74 of the Treaty of Münster of 1648. This claim was in violation of sec. 87 of the same treaty, by which all the States of Alsace were preserved in their *immédiateté* toward the Empire, for by it they were obliged to submit to the sovereignty of France.¹⁵

The negotiations in advance of the Peace of Ryswick in 1697 laid stress on the abolition of all reunions, and Article 10 of the treaty between France and Spain of September 20, 1697, at that place provides that all the places, cities, burgs, and villages in the Netherlands, which Louis XIV had reunited since the Treaty of Nymwegen, should be returned, with the exception of eighty-two cities, etc., included in a list appended to the treaty, which Louis XIV claimed had been dependencies of the cities of Charlemont, Maubeuge, and others previously ceded to him. To the Emperor's diplomats France made a triple proposition,¹⁶ and the settlement between France and the Emperor of October 30, 1697, was on condition that France should give up all property she had occupied, during war or peace, under the name of reunions. The decrees of the chambers of Metz, Besançon, and Brisach were canceled and annulled; that is to say, France engaged to restore all the reunions which she had made outside of Alsace or which were comprised in the list of reunions presented before the congress by the French ambassadors. Article 4 of the treaty says: "All the reunions which extend over places outside of Alsace or are comprised in the list produced by the French Ambassador are canceled." "The conjunction or which binds the two members of the phrase," says Schoell, "indicates that it is not necessary that a place should be both situated outside of Alsace and indicated on the list to be restored to the Empire. Either of the conditions suffices." So in adhering to the letter of the article a place in Alsace and on the list would have to be given up. This was not the intention of France, and in the case of the county of Hanau, situated in Alsace, the dispute continued until the nine-

¹⁵ Léonard, Frédéric, *Recueil des arrêts de la chambre royale établie à Metz . . .* (Paris, Léonard, 1681); Schoell, *Histoire Générale des Traités de Paix*, I, 380; Garden, *ibid.*, II, 121-122.

¹⁶ Schoell, *ibid.*, I, 425-427; Garden, *ibid.*, II, 164.

teenth century. The county was by error, it seems, included in the list, and France sought to hold it by letters patent of 1701 and 1707 under which special prerogatives were given to the Count, constituting a voluntary submission to France, as it was held. The Empire never sanctioned these, and it seems to be clear that the illegal and compulsory act of the Count of Hanau could not change the provisions of the treaty. Another dispute arose in this connection in regard to the boundaries of Alsace, but this was rather a matter of geography and treaty interpretation than anything else. Though this case involves other types of violation, it is primarily an instance of internal laws violating political treaties and these laws (or court decrees) being invalidated by the family of nations.

2. England found herself unable to execute all of the Treaty of Utrecht of April 11, 1713, owing to a clause contrary to her commercial laws, which Parliament failed or refused to amend.¹⁷ This is usually cited as a violation, though certainly it would not now be so defined.

3. The first secret article attached to the Convention of Vienna of July 16, 1733, reveals at least an invasion of the religious provisions of the Peace of Westphalia. By it the Emperor declared that the guarantee of the States of the Elector of Saxony extended specifically not only to the bishoprics of Meissen, Merseburg, and Naumburg, but also to the cessions which the House of Hesse Cassel would have to make to the Elector after the death of the Count of Hanau, and to the fiefs which would fall to the Elector in case of decease of the titular holders. By the treaty of Westphalia the bishoprics of Meissen, Merseburg, and Naumburg were assigned to the Protestant party, but were not secularized. The episcopal chapters would continue to elect bishops or, according to the canon law, to postulate administrators from the descendants of the Elector John George I, who died in 1656. His eldest son was Elector of Saxony and administrator of Meissen, with the chapter of which he engaged in 1663 to erect a perpetual postulation by which this bishopric was forever united to the electorate; but the change of religion of the Elector August of Saxony should have served to annul this postulation, the effect of

¹⁷ Wheaton, *International Law*, III, II, 7; Du Mont, *Corps universel diplomatique*, VIII, Pt. I, 345.

which was contrary to the Peace of Westphalia. By virtue of perpetual postulations, which the chapters had signed, the bishoprics of Merseburg and Naumburg became hereditary in the branches founded by the son of John George I, Maurice William, duke or postulant bishop of Naumburg-Zeitz, who turned Catholic in 1717. The chapter, following the terms of the Peace of Westphalia, declared the seat vacant. These territories were particularly guaranteed to Saxony by the Vienna Convention.

4. On November 16, 1792, the French national convention provoked Great Britain and the States General by decreeing the liberty of the Scheldt despite Article XIV of the Peace of Münster and the convention's own mediation between the Emperor Joseph II and the States General a few years before, when, by the Peace of Fontainebleau of November 8, 1785, the closure was agreed to by the Emperor under the direct auspices of France. At that time political reasons made the States General dependent to an extent upon France, and this condition was consummated by the treaty of peace and alliance signed at The Hague, May 16, 1795. Article XVIII of the latter treaty stipulates that the navigation of the Scheldt, as well as of the Rhine, Meuse, and the Hondt, was to be free to both nations,¹⁸ thus confirming the French decree.

5. A French decree of February 2, 1793, was directed against the English attitude as to maritime commerce. It reversed principles which Louis XVI had applauded as proclaiming the freedom of goods in neutral bottoms. It also violated the stipulations of treaties. By Article XX of the French treaty of September 30, 1749, with Denmark, the life of which was until the next treaty, both parties agreed that the liberty of navigation was to be so extended that, in case one of the contracting highnesses should find himself at war against other States, subjects of the other contractant would be left "the ability of navigating freely and surely as before the war, either in leaving their own ports or other neutral ports, to go to any port hostile to one of the contracting highnesses, or from one enemy port to another without being put to any trouble or prevention either in going or coming; nevertheless, there is excepted the case where the port into which they would

¹⁸ Schoell, *Histoire Générale*, IV, 218, 293; Garden, *ibid.*, V, 190, 252.

enter might be actually besieged or blockaded from the sea side." Article XXVIII added positively that the flag covered merchandise.¹⁹

6. The English having prevented many neutral ships laden with grain from entering ports of the French Republic, a law of the latter of May 9, 1793,

authorized French warships and corsairs to arrest and bring into the ports of the Republic neutral ships which should be found laden, in whole or in part, either with eatables belonging to neutrals and destined for enemy ports, or with merchandise belonging to enemies. The latter shall be declared good prize and confiscated to the profit of the captors; the eatables belonging to neutrals shall be paid for on the basis of their value, freight included, and an indemnity shall be granted to the ships on account of their detention.

Thus France again violated the treaty of 1749 with Denmark.

7. Great Britain followed the same system for a considerable time, and an instruction, issued June 8, 1793, to British maritime interests, authorized the arrest of any vessel laden in whole or in part with corn, wheat, or flour destined to a port of France or a port occupied by the French army, and the sending of such vessels into the most convenient port so that their foodstuffs might be bought for the British Governmental account. The ship having been released, the captain, after being cautioned, might obtain permission to take his goods to the port of a friendly country. The second article authorized the arrest of all ships, whatever their burden, which attempted to enter a blockaded port, and their sending to England for condemnation with cargo, except the ships of Denmark and Sweden, which were only to be prevented from entering on the first attempt, but condemned on the second. The third article proclaimed a paper blockade. This decree resulted in correspondence between Minister Hailes of England at Copenhagen and Count Bernstorff, Minister for Foreign Affairs, who in a note of July 28, 1793, said:

[Denmark] is the suffering party, but she does not comprehend how his Majesty the King of Great Britain has been able to give to commandants of his ships, and this without asking its advice, an additional instruction entirely contrary to the preceding instructions and to his treaties with Denmark.²⁰

¹⁹ Schoell, *op. cit.*, VI, 9, 10; Garden, *op. cit.*, VI, 305-307.

²⁰ Schoell, *op. cit.*, VI, 21; Garden, *op. cit.*, VI, 316.

The treaty principally referred to is that of July 11, 1670, Article XX of which, establishing in an imperfect manner the rights of neutral commerce, was explained by a convention of July 4, 1780. The latter recites a list of merchandise to be considered contraband and expressly excepts wheat, flour, corn, and other grain. The instruction consequently was a violation of this provision, though it did not happen to be a violation of the almost identic treaty of October 23, 1661, with Sweden. There followed a diplomatic correspondence between Russia and Denmark, French decrees in abundance, and considerable British diplomatic activity, including an English instruction of November 6, 1793, that all French colonial goods in any bottom were to be seized. These measures forced Sweden and Denmark into the alliance of March 27, 1794, and there was no real solution of the matter until the Convention of London of July 25, 1803.

8. Article XI of the Peace of Basel of April 5, 1795, between France and Prussia, engaged France to welcome the good offices of the King of Prussia in favor of the princes and States of the Germanic Empire that might desire to enter directly into negotiations with it and that to this end had asked or should ask the mediation of the King of Prussia. The French Republic consented not to treat as enemy country for a period of three months after the ratification of the treaty those states and principalities on the right bank of the Rhine in behalf of which the king had interested himself. This treaty opened to the States of the Empire a method of avoiding the burden of war by making their peace individually with France. Schoell ²¹ states that the method was unconstitutional and contrary to the obligations which the States had contracted as members of the Germanic Confederation; and that therefore only a few profited by the opportunity, while most of them remained faithful to their engagements either out of attachment for the cause they defended or out of fear for the resentment of the Emperor, whose troops occupied their territory and whose protection would be necessary to them on the arrival of the general peace to prevent losses of territory to the Emperor. The Landgrave of Hesse Cassel was the first to make a special peace with France. By Article III of his treaty of August 28, 1795, the Landgrave specifically renounced the treaty

²¹ *Op. cit.*, IV, 300; Garden, *op. cit.*, V, 287-8.

of subsidies which he and the Margrave of Baden had concluded with Great Britain at Langencandel on October 5, 1793.²²

9. Article 4 of the provisional treaty of peace concluded at Paris on November 30, 1782, and of the definitive treaty of peace of Paris concluded on September 3, 1783, between Great Britain and the United States provides:

It is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money of all *bona fide* debts heretofore contracted.

The following facts, said the Supreme Court,²³ were of the most public notoriety, at the time when the treaty was made, and therefore must have been very well known to the gentlemen who assented to it. 1st. That British debts, to a great amount, had been paid into some of the State Treasuries, or loan offices, in paper money of very little value, either under laws confiscating debts, or under laws authorizing payment of such debts in paper money, and discharging the debtors. 2d. That tender laws had existed in all the States; and that by some of those laws, a tender and a refusal to accept, by principal or factor, was declared an extinguishment of the debt. From the knowledge that such laws had existed there was good reason to fear that similar laws, with the same or less consequences, might be again made (and the fact really happened), and prudence required to guard the British creditor against them. 3d. That in some of the States property, of any kind, might be paid, at an appraisement, in discharge of any execution. 4th. That laws were in force in some of the States, at the time of the treaty, which prevented suits by British creditors. 5th. That laws were in force in other of the States, at the time of the treaty, to prevent suits by any person for a limited time. All these laws created legal impediments, of one kind or another, to the recovery of many British debts, contracted before the war; and in many cases compelled the receipt of property instead of gold and silver.

A bond between Ware and Hylton was dated in 1774, that is, before the outbreak of the Revolution. In 1777 Virginia passed an Act for sequestrating British property, providing that full discharge of the debt should be created by the payment of the sum due to the commonwealth. In 1780 payment was made by Hylton in accordance with this Act. "When the British creditors under such circumstances, after the establishment of peace, sought to proceed in the State courts

²² Martens, *Recueil*, VI, 548.

²³ 3 Dallas 238.

they found the treaty unavailing, since those tribunals held themselves still to be bound by the local statutes. In order to remove this difficulty, as well as to provide a rule for the future, there was inserted in the Constitution of the United States the clause declaring that treaties then made, or which should be made, under the authority of the United States, should be the supreme law of the land, binding on the judges in every State, anything in the constitution or laws of any State to the contrary notwithstanding."²⁴ In 1788 the Constitution became operative and in 1796 the case of *Ware v. Hylton* came before the Supreme Court. All but one of the justices held that the creditor was entitled to sue without regard to the validity or invalidity of the Virginia statute.²⁵

10. On July 7, 1798, Congress abrogated the treaty of defensive alliance of February 6, 1778, with France and the other treaties then subsisting with that State, because "they have been repeatedly violated on the part of the French Government."²⁶ It was held in *The Atlantic* (37 Ct. Cl. 17) that after the abrogation, the obligations of France must be determined by the law of nations. This is apparently because of the antecedent violation by France, one phase of which consisted of a unilateral decree abrogating so much of the treaty of 1778 as related to contraband goods. In *The James and Wilson* (37 Ct. Cl. 303) it was held that this unilateral act did not impair any treaty right of the United States.

11. A capitulation by Article X of which commanding generals were to give three days' notice before beginning hostilities was signed at Calpi January 10, 1799, between the French general, Championnet, and the Viceroy of Naples. January 17 the Neapolitans proclaimed Prince Moliterni Captain-General, and he undertook to restore quiet in the city after the Neapolitan sailors had shown signs of demonstrating against the French. Moliterni began negotiations with Championnet, but the latter declared the armistice broken because a corps of *lazzaroni* had attacked the French near Capua. Fighting continued on

²⁴ Moore, *Digest of International Law*, V, 697.

²⁵ See generally on the subject of these debts, Moore, *International Arbitrations*, 271-298.

²⁶ Moore, *Digest*, V, 356.

January 19, 21, and 22, but Moliterni abandoned the people and took the French side. Championnet took possession of Naples, levied a war contribution, and proclaimed the Parthenopean Republic, at the head of which he placed Moliterni.

12. The Prussian ministry declared to Lord Heresford, the British envoy at Berlin, in a note of February 12, 1801, that the League of the North did not have for its object the reversal of the commercial treaties previously concluded with England. Baron Ehrenswaerd, Swedish Minister at London, communicated on March 4 the treaty of December 16, 1800, between Russia and Sweden and Russia and Denmark in which stipulations directly contrary to the British contentions were laid down regarding the rights of neutrals. The minister also complained of the embargo laid on Swedish ships. To justify the legitimate character of the league, the Swedish minister referred to the silence observed by Great Britain on the armed neutrality conventions of 1780 and 1781, which had never been held contrary to its rights, as well as the convention of 1791, which partially renewed that of 1780. The treaties in question laid down in Article III the principles that neutral ships could navigate freely to belligerent ports; that goods belonging to belligerent subjects were free unless contraband; denied paper blockade, etc., all of which were directly against British contentions. In April, 1801, occurred the battle of Copenhagen, after which the British admiral offered Denmark a choice of an alliance or disarmament and demanded the suspension of the Convention of 1800. The suspension of arms came about shortly on news of the death of Paul I of Russia, and there resulted the maritime convention of St. Petersburg of June 17, 1801, between Russia and Great Britain, which established a new maritime code.²⁷

13. In 1802, in the course of a revolution in Switzerland, General Andermatt received orders to occupy Zurich, which was bombarded. A convention of September 15, however, relieved the city of the obligation of receiving a garrison. At the news of the treatment accorded to Zurich, the antagonists of the central system of government, which had triumphed in the Swiss constitution of May 20, pronounced them-

²⁷ Martens, *Recueil*, IX, 192, 478; Schoell, *Histoire Générale*, VII, 73-74, 98-99; Garden, *ibid.*, VI, 365-381.

selves in all the Cantons. Rudolph d'Erlach was put at the head of 2000 peasants, to whom were joined the French *émigrés* who had served in 1800 in the Austrian army. Rudolph appealed by a proclamation to the people to establish the old constitution, and the small Cantons denounced the armistice, which had been made on the 8th of September by a proclamation of General Andermatt, as having been broken by the attack on Zurich.²⁸

14. The Peace of Presburg of December 26, 1805, illegally disposed of the property remaining to the Teutonic order by granting it to a prince of the House of Austria to be designated by the chief magnate thereof.²⁹ The Emperor appointed his brother, Archduke Anthony. Bonaparte, who had thus disposed of the property of the order in concert with the Emperor of Austria, believed, in 1809, when he was at war with Austria, that he could dispose of the same property again. At Ratisbon, on April 24, he published on his own authority a decree to the effect that the Teutonic order be suppressed in all the countries of the Confederation of the Rhine, that its properties be united to the domains of the States wherein they were situated, and that Mergentheim, with the rights, domains, and revenues attached to the grand-mastership and mentioned in Article XII of the Treaty of Presburg, should be incorporated in the Kingdom of Würtemberg. This decree was absolutely violative of the 1805 treaty, but Article IV of the Peace of Schoenbrunn between Austria and France of October 10, 1809, sanctioned the Napoleonic decree and promised pensions to the employés of the order. As this promise was never executed, Article XV of the Act of the Germanic Confederation, concluded at Vienna, June 8, 1815, renewed the provision and charged the Diet of Frankfort with its execution.³⁰

15. "By Article II of the treaty between the United States and Great Britain of July 3, 1815, it is provided that no 'higher or other duties' shall be imposed on the 'exportation of any articles' from the one country to the other 'than such as are payable on the exportation

²⁸ Garden, *op. cit.*, VIII, 18.

²⁹ Schoell, *Histoire*, VII, 428; Garden, *ibid.*, IX, 40-43.

³⁰ Schoell, *op. cit.*, IX, 286-287, and XI, 318. The constitution is Annex 9 to the Treaty of Vienna.

of the like articles to any other foreign country.' From the date of the treaty down to May 6, 1830, certain duties were levied by the British Government in violation of this stipulation, but the fact does not seem to have been understood either by the government or by shippers till December 27, 1825, when some American merchants discovered and called attention to it; and from the 20th of the following January they paid the duties in question under protest, or conditionally. On August 20, 1826, the committee of the privy council for trade decided that the duties were illegally exacted, but the board of customs refused to refund them, and obtained the passage of an act of limitations to the effect that duties thus assessed should not be refunded for a period extending back more than three years. For a number of years no further action was taken, but on December 3, 1845, the board of customs ordered the duties to be refunded back to January 26, 1823. The claims for the refund of duties from July 3, 1815, to January 26, 1823, remained unadjusted, and were submitted to the commission under the convention between the United States and Great Britain of February 8, 1853. A question arose, but seems to have been but little pressed, as to whether the claims were internationally barred by lapse of time, or rather by the act of limitations above referred to."³¹

16. The Creek and Cherokee Indians occupied territory within the State of Georgia under a series of treaties. The governor, supported by the legislature and determined to acquire these lands, argued that the sovereign rights of the State inhibited any Federal interference with the expulsion of the Indians, whose tenure was guaranteed by Federal treaty provisions. Worcester had been indicted under a State Act forbidding any one under criminal penalties from residing in the Cherokee territory without a license from the State authorities. He pleaded provisions of vigorous treaties and of a Federal statute and that Georgia's Act was unconstitutional and void as being in conflict therewith. He was convicted and the conviction was sustained in the State court. The Supreme Court of the United States reversed this decision and ordered his discharge. No recognition was given to the order of the Supreme Court when it was returned to the State court, which refused to grant a writ of *habeas corpus*. Worcester continued

³¹ Moore, *International Arbitrations*, page 4179.

to remain in prison, and the Federal authorities failed to take any action to enforce the Supreme Court mandate.³² Obviously the State's action violated the Indian treaty.

17. Article 14 of the treaty between the United States and Mexico of April 5, 1831, reads:

Both the contracting parties promise and engage to give their special protection to the persons and property of the citizens of each other, of all occupations, who may be in their territories, subject to the jurisdiction of the one or of the other, transient or dwelling therein; leaving open and free to them the tribunals of justice for their judicial recourse, on the same terms which are usual and customary with the natives or citizens of the country in which they may be; for which they may employ, in defense of their rights, such advocates, solicitors, notaries, agents, and factors as they may judge proper, in all their trials at law; and the citizens of either party, or their agents, shall enjoy, in every respect, the same rights and privileges, either in prosecuting or defending their rights of person or of property, as the citizens of the country where the cause may be tried.

On February 26, 1845, Alexander A. Atocha, a citizen of the United States, a personal friend of Santa Anna, and a financial agent of his administration, was ordered by the Mexican Government to leave Mexico within eight days. He protested through the American Minister that the order was a violation of the treaty. He presented a claim to the commission appointed for the adjustment of claims under the Treaty of Guadalupe Hidalgo. The commission rejected the Atocha claim because Atocha was with Santa Anna when ordered to leave and because Minister Shannon did not reply to a communication of the Mexican Minister for Foreign Affairs in which the latter ascribed to Mr. Shannon personal knowledge of Atocha's implication in Santa Anna's political plans. After the commission adjourned Atocha found a dispatch from Minister Shannon to the Washington Government denying the truth of the charge, and explaining why he did not reply. Congress passed an Act on February 14, 1865, referring the claim to the Court of Claims, which awarded \$207,852.60 to Atocha's administratrix. The judgment was based especially on the treaty article cited above. As the constitution of Mexico provides that a

³² *Worcester v. The State of Georgia*, 6 Peters 515 (1832); Burr, *op. cit.*, 353-355; Von Holst, *Constitutional History of the United States, 1750-1833*, 452-455.

citizen should not be expelled for political offenses without a trial, the court held that it was not proper for Mexico to expel an American citizen for alleged complicity in a revolution without trial, the civil authority being at the time restored.³³ Before the Court of Claims the affair was essentially a new case.

B. AFTER 1848

18. The consular convention of February 23, 1853, between France and the United States says:

Art. 2, paragraph 3. [The consuls general, consuls, vice consuls or consular agents of the United States and France] shall never be compelled to appear as witnesses before the courts. When any declaration for judicial purposes, or deposition, is to be received from them, in the administration of justice, they shall be invited, in writing, to appear in court, and if unable to do so, their testimony shall be requested in writing, or be taken orally at their dwellings.

Art. 3. The consular offices and dwellings shall be inviolable. The local authorities shall not invade them under any pretext. In no case shall they examine or seize the papers there deposited. In no case shall those offices or dwellings be used as places of asylum.

At the April, 1854, session of the United States District Court for the Northern District of California an indictment was found against a Mexican for violation of the Neutrality Act. French Consul Dillon was served with a *subpoena duces tecum* as a witness for the defense. M. Dillon was not in court when the witnesses for the defense were called and defendant's counsel asked for an attachment against him, stating that counsel was prepared to argue the right to such an attachment. Judge Ogden Hoffman granted the attachment and under it M. Dillon was brought into court. His counsel presented a protest based on the treaty provisions quoted, and M. Dillon stated that the paper which he was summoned to bring with him must form part of the consular archives, if it was in existence. Judge Hoffman, after the protest had been argued, changed his opinion and held that compulsory process ought to have been refused. When the attachment was served on M. Dillon he hauled down his consular flag, and his Minister at

³³ Moore, Digest, IV, 97; 13 Stat. 595; Moore, International Arbitrations, 1264; S. Rep. 70, 38th Cong., 1st sess.; Atocha's Case, 8 Ct. of Cl. 427.

Washington took up the incident as involving disrespect to the French flag. After a long controversy the affair was closed with an expression of regret by the Government of the United States and an agreement to salute the French flag with a national salute.³⁴

19. Actual violation of a treaty due to haste in executing it is one of the anomalies of which there is record. In Italy the sanction of Parliament is necessary to establish a treaty as the law of the land. On March 24, 1860, the Italian and French plenipotentiaries signed the treaty of cession of Nice and Savoy, and the Italian Parliament was not called to sanction the act until May 27. The treaty itself expressly stipulated that the cession should be effected with the consent of the population and the vote of Parliament. On April 16, however, the Italian ministry caused the plebiscite to be held in the province, and by the time Parliament met in May the whole cession was a *fait accompli* so far as being affected by any vote of the Parliament was concerned. France was already in possession when the Parliament met, though Rattazzi argued the illegality of the act in its session to no effect.³⁵

20. "With a dispatch, No. 26, of July 21, 1870, Mr. Partridge, United States consul at Bangkok, inclosed to the Department of State certain correspondence in relation to the execution of two native servants of the Rev. Messrs. Wilson and McGilvary, citizens of the United States. The Department of State declared the proceeding to have been a plain violation not only of Article I of the treaty of 1856, which stipulates full protection and assistance to enable them to reside there in security, but also of Article V, which stipulates for the free exercise of religion and for the right of Americans to employ Siamese subjects

³⁴ Moore, Digest, V, 78-81. A constitutional point in the judge's opinion is omitted from the summary. For a very similar instance occurring in Germany to an American consul general, see Moore, *ibid.*, 81-83. In this instance, however, the summons was withdrawn and the consul general appeared voluntarily. For another instance, see For. Rel., 1905, 458-461.

³⁵ *Atti del Parlamento italiano*, 1860, 158 ff. The Italian treaty of peace with Austria in 1866 was likewise acted upon before Parliament had opportunity to express its opinion. According to its terms, Italy was to pay Austria thirty-five million florins, and the payment was made by the executive before the Parliament could approve the treaty. This brought a protest from Mancini, but to no avail. (*Atti*, 1867, 358.)

as servants. It appeared, however, that the Siamese Government had ultimately receded from the ground, which it at first assumed, that the stipulations of the treaty were not applicable to the case in question."³⁶

21. "Complaint was made by the Chinese legation that Article III of the immigration treaty of November 17, 1880, guaranteeing to Chinese subjects in the United States the protection of the laws, was violated by various acts committed at Butte City, Montana. The governor of Montana investigated the complaint and reported that in the particular case, which was believed to have been the cause thereof, the offender had, been convicted and sentenced to imprisonment."³⁷

22. By section 14 of the Act of June 6, 1884, a duty of three cents a ton, not to exceed fifteen cents a ton per annum, was imposed in lieu of the uniform tax of thirty cents a ton per annum levied on vessels from foreign ports in the Western Hemisphere. Vessels entered from other foreign ports were to be subject to a duty of six cents a ton. Belgium, Denmark, Germany, Italy, Portugal, and Sweden and Norway claimed the 3- to 15- cents rate by reason of the most-favored-nation clause, except that Sweden and Norway based the claim on Article VIII of the treaty of July 4, 1827, by which the contractants "engage not to impose upon the navigation between their respective territories, in the vessels of either, any tonnage or other duties of any kind or denomination, which shall be higher or other than those which shall be imposed on every other navigation except that which they have reserved to themselves respectively." All the claims were denied except that of Sweden and Norway, in behalf of which that government urged a construction of the treaty originally claimed by and conceded to the United States. By Act of June 19, 1886, the President was directed to suspend these duties under certain reciprocal conditions. The Netherlands, Germany, and certain other countries were brought under this provision by proclamation.³⁸

³⁶ Moore, Digest, V, 847.

³⁷ Moore, Digest, V, 447-448; citing For. Rel., 1892, 142, 143. For a similar case at Vallejo, California, see For. Rel., 1891, 461-462, 466.

³⁸ Moore, Digest, II, 74-75. The facts of the Swedish-Norwegian claim will be found in For. Rel., 1874, 1117-1120; 1888, 669-674.

23. Article III of the treaty of commerce and navigation between Italy and the United States of February 26, 1871, says:

The citizens of each of the high contracting parties shall receive, in the states and territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or shall be granted to the natives, on their submitting themselves to the conditions imposed upon the natives.

On March 14, 1891, eleven Italians charged with the murder of the chief of police of New Orleans were killed in the parish prison of the city by a mob of citizens. Three or more of the victims were Italian subjects and on behalf of these Baron Fava, the Italian Minister at Washington, requested "that the guilty parties, whether perpetrators, accomplices, or instigators of the massacre which took place yesterday, be speedily brought to justice." He reserved the right to demand any other reparation which his government might think proper. Representations were made to the governor of Louisiana that the guilty persons should be brought to justice. On March 31, Baron Fava defined the demands of Italy as two, — official assurance by the United States that the guilty persons should be brought to trial, and the recognition of the principle of an indemnity. He then withdrew, leaving a *chargé d'affaires*. Secretary Blaine admitted a violation of treaty rights, but held that Italy's action was precipitate. On May 5, the New Orleans grand jury made a report excusing the attackers of the jail, none of whom was indicted or brought to trial. The Federal Government was powerless under the system of State rights to bring the case before the Federal courts, and President Harrison recommended legislation which would remedy the defect. The United States, without acknowledging responsibility, and solely as an act of courtesy and justice, on April 12, 1892, paid Italy 125,000 francs (\$24,330.90) and diplomatic relations eventually were reestablished.³⁹

24-27. Similar incidents involving the same provision and of the same character occurred at Rouse, Colorado, in 1895 (\$10,000); at

³⁹ Moore, Digest, VI, 837-841; For. Rel. 1891, 658-728; see also *City of New Orleans v. Abbagnato*, 62 Fed. Rep. 240.

Hahnville, Louisiana, in 1896 (\$6000); at Tallulah, Louisiana, in 1899 (\$6000); at Erwin, Mississippi, in 1901 (\$5000).⁴⁰

28-29. Still further incidents of the same character were an outbreak against Spaniards at New Orleans or Key West in 1851; and an attack on Messrs. Wexel and De Gress, Americans, at Callao, Peru, on August 20, 1876, in apparent violation of Article XV of the treaty of 1870.⁴¹ The cases of the Chinese at Rock Springs, Wyoming, on September 2, 1885, and in Washington, Montana, Alaska, and California are recounted at length in Moore's Digest, but seem to have fallen outside of treaty provisions.⁴²

30. With the approval of Commander O'Neil of the U. S. S. *Marblehead*, two Americans, J. S. Lampton and George B. Wiltbank, accepted positions as officials during the interregnum following the overthrow of the provisional government of Nicaragua in July, 1894. They were subsequently invited to call at the Nicaraguan commissioner's office, and there were arrested. They were taken from Bluefields, where they were in business and resided, to Managua and thence were sent under guard out of the country. The Nicaraguan Government refused either to try them or to allow them to return to Bluefields to settle their affairs. Nicaragua insisted they must be expelled because they were "compromised in the crimes and sedition" at Bluefields, and that by such action they had forfeited rights of residence under the treaty with the United States of June 21, 1867, which in Article XII says:

The citizens of the United States and the citizens of the Republic of Nicaragua, respectively, residing in any of the territories of the other party, shall enjoy in their persons and property the protection of the government, and shall continue in possession of the guarantees which they now enjoy. . .

The United States admitted that if the charge of making themselves dangerous to the public peace was true, Nicaragua had the right to expel the Americans, "provided it was exercised in a becoming manner and without undue harshness." Secretary Gresham, on August 29,

⁴⁰ Moore, *ibid.*, III, 344-353, and VI, 841-849, with citations there mentioned.

⁴¹ Moore, VI, 817-818.

⁴² *Op. cit.*, 822-837.

telegraphed to Minister Lewis Baker to "demand immediate open trial of the accused, with all guarantees of defense secured by treaty, and, in default thereof, their release." The Department of State held that Americans could not be deprived of rights under the treaty unless these were forfeited, "and that they are entitled to know the grounds of forfeiture. If forfeiture is claimed . . . for alleged participation in an insurrectionary movement against Nicaragua, they should be informed of the charge against them and the evidence in support of it. This position will be maintained by the United States hereafter in all cases." Lampton and Wiltbank were permitted to return to Bluefields and the order of expulsion was revoked.⁴³

31. Article 5 of the treaty of amity, commerce, navigation, and extradition between Haiti and the United States of November 3, 1864, provides that "the citizens of each of the high contracting parties . . . shall [not] be compelled to pay any contributions whatever higher or other than those that are or may be paid by native citizens." Haiti by a law enacted October 1, 1897, authorized the levying of taxes on foreign merchants and clerks many times greater than those imposed on natives of similar occupation. The Minister of the United States was instructed to protest this law, if any attempt was made to execute it, as in violation of the treaty article. In a dispatch of May 5, 1898, to Secretary Sherman, Minister Powell reported that the question had been satisfactorily and definitely adjusted in favor of the United States.⁴⁴

32. In the arbitration claim of *John D. Metzger & Co. v. The Republic of Haiti*, under the protocol of October 18, 1899, it was held that the Haitian Government was bound to make reparation for the seizure and sale of the goods of an American firm doing business in that country in order to enforce the payment by certain American employés, under Article 9 of the Haitian law of October 24, 1876, stipulating that foreigners should pay a tax double the amount payable by natives exercising the same industry, if said foreigners were to be permitted to pursue any industry other than commerce. Arbitrator William R. Day, in his award, said:

⁴³ Moore, Digest, IV, 99-100; For. Rel., 1894, App. I, 329-352.

⁴⁴ Moore, Digest, V, 730; For. Rel., 1898, 387 ff.

This law (October 24, 1876), so far as it affects American citizens, is in direct violation of the stipulations of the treaty. In practice it is shown that these license taxes were seldom enforced against workmen in Haiti. By direct enactment of law the solemn obligations of the treaty are ignored and discriminating burdens imposed upon foreigners without exception. When this condition of affairs was diplomatically called to the attention of the authorities of the Republic of Haiti, it is to the credit of that government that it promptly conceded that American citizens had rights under the treaty which deserve protection and which the Government of Haiti undertook to see were duly guarded, leaving Metzger & Co. to pursue their remedy of the infraction of their rights already sustained.

33. The boundary convention of November 12, 1884, between the United States and Mexico provides:

Art. III. No artificial change in the navigable course of the river [Rio Grande], by building . . . obstructions which may tend to deflect the current or produce deposits of alluvium . . . shall be permitted to affect or alter the dividing line as determined. . .

The American Rio Grande Land & Irrigation Company desired to develop by irrigation a large tract of land along the river. It constructed a canal system and installed a pumping station on the bank of the river to supply water to its canals. As this development was under way a natural cut-off in the course of the Rio Grande began taking place, the company making an unsuccessful attempt to prevent the change in the river's course by revetting the bank. The company then tried to save its pumping station, which was on the only available site, by cutting an artificial channel, this project being completed in June and July, 1906. The artificial cut-off changed the American-Mexican boundary line by altering the channel of the river, and seems also to have resulted in damage to Mexican landowners through loss to growing crops, construction of levees, loss of land by erosion and of riparian rights. As a consequence, the Mexican Government brought the matter to the attention of the International Boundary Commission, whose engineers reported that the company was in the wrong and should indemnify for the offense. This report was referred by the Department of State to the Attorney General, who, under date of May 16, 1907, rendered an opinion in which he said:

As to indemnity for injuries which may have been caused to citizens of Mexico, I am of opinion that existing statutes provide a right of action and a forum. Section 563, Revised Statutes, clause 16, [Judicial Code, § 24, 17] gives to district courts of the United States jurisdiction "of all suits brought by any alien for a tort only in violation of the law of nations or of a treaty of the United States." The act of August 13, 1888, amending and superseding earlier laws (25 Stat., 433, sec. 1), gives to the circuit courts of the United States "original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity . . . in which there shall be, . . . a controversy between citizens of a State and foreign States, citizens, or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid [\$2000]." . . .

As to the public tort, so to speak — that is, the injury to Mexico in respect to the boundary line by changing the channel of the river — I incline to the view that a treaty of the United States, which is a part of the supreme law of the land, having been violated, a remedy exists to redress that wrong. The United States owes the duty and has the right of vindicating the treaty. It can hardly be doubted that in a proper case calling for prevention the United States may proceed by bill in equity to obtain an injunction, and that in a case like the present, where the prohibited thing has been done, the United States may proceed in the same way to obtain mandatory relief in some appropriate form to compel the restoration of the *status quo ante*. I find provision for this course in the act of 1888, already referred to. That act gives jurisdiction to the circuit courts of the United States of all suits of a civil nature at common law or in equity in which the United States are plaintiffs or petitioners. I am of the opinion that the limitation of jurisdictional amount in that act does not apply to such suits.

The Secretary of State replied to the Attorney General that in his opinion it was desirable to institute and maintain a suit against the offending corporation, and accordingly a bill in equity was filed against the American Rio Grande Land & Irrigation Company in the Circuit Court for the Southern District of Texas. The decree of the court, dated December 5, 1911, ordered:

First. That defendant . . . do convey to the complainant, Señor Don Adelberto A. Arguelles, Trustee, by warranty deed, for the benefit of all of the owners of lands situated in Mexico damaged by the unlawful diversion of the Rio Grande, all that tract or parcel of land belonging to said defendant company that was "cut-off" or cast upon the southern bank of the Rio Grande by said unlawful diversion, . . .

Second. That defendant . . . do pay unto the complainant, Señor Don Adelberto A. Arguelles, Trustee, Five Thousand Dollars for the benefit of all the owners of Mexican lands so damaged. . . .

Third. That defendant, American Rio Grande Land & Irrigation Company, do pay to the United States of America, Complainants, the sum of Two Thousand Dollars (\$2000) to cover costs and expenses incident to surveying and marking the international boundary line now represented by the former bed or channel of the Rio Grande before the unlawful diversion of the stream was made by defendant, as aforesaid.

Fourth. That as a penalty for violating the provision of the treaties, as aforesaid, in making, by artificial means, the unlawful change, diversion and interference with the natural channel, course and flow of the waters of the international boundary line stream, the Rio Grande, by reason of the wrongful acts complained of, that the defendant company pay to complainant, the United States of America, the sum of Ten Thousand Dollars (\$10,000) and court costs in the sum of Two Hundred Dollars (\$200).^{45, 46}

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⁴⁵ This JOURNAL, VI, 478-485.

⁴⁶ The following are additional citations of this form of violation:

34. For a case involving inobservance of treaty provisions by local authorities and also of the most-favored-nation clause, see Moore, Digest, V, 573-576.

35. For the Van Bokkelen case, involving imprisonment "in derogation of the rights to which he was entitled as a citizen of the United States under stipulations contained in the treaty between the United States and Haiti" of November 3, 1864, see Moore, Digest, VI, 699-701, 772-773, and International Arbitrations, 1807-1853.

36. For the Panama riot of April 15, 1856, as a result of which New Granada acknowledged liability for failure to preserve peace and good order in accordance with Article 35 of the treaty of peace, amity, navigation and commerce of December 12, 1846, see Moore, Digest, III, 34-36; VI, 819, 960, and International Arbitrations, 1361.

37-43. For instances arising between the United States and Spain under Article 7 of the treaty of friendship, boundaries, commerce and navigation of October 27, 1795, see Moore, Digest, VI, 908-914. The incidents occurred in Cuba in 1896 and 1897 and related to a decree of the Governor General ordering a general requisition of horses and mules, spoliation of cane crops for forage, quartering of troops and spoliation thereby, the Governor General's executive order prohibiting export of leaf tobacco by foreigners, and the appropriation of an American's estate for an agricultural colony of impoverished *concentrados*. Altogether five types of violation. "It is the opinion of the Commission that the treaty of 1795 and the protocol of 1877 were in full force and effect during the insurrection in Cuba, and they will be applied in deciding cases properly falling within their provisions," said paragraph 9 of the statement of April 28, 1903, copying the President's instructions. See also on this subject Moore, Digest, VI, 923, 970-972. The latter citation presents a sixth type of such violation involving abandonment of a plantation by military order and subsequent overrunning of it by Spanish soldiers. The case of Sanguily's imprisonment offers a possible seventh type. Moore, VI, 784-785.

44. For liability of the United States under the French Claims Convention of January 15, 1880, see *Joseph Chourreau v. United States*, Boutwell's Report, 134, 140, and Moore, Digest, VI, 920-921. This is perhaps not a true case of treaty violation.

45. For the case of Dr. Maurice Pflaum, involving infraction of Article IV of the treaty of commerce and navigation of May 7, 1830, with Turkey, see Moore, Digest, VI, 771-772. Extraterritorial jurisdiction was violated in this instance.

46. For arrests in Turkey of American naturalized citizens bearing passports but charged with crime in contempt of extraterritorial rights (Article IV, treaty of 1830), see For. Rel., 1905, 885-898.

47. For the inconsistency of Articles 49, 50, 59, 60, 61, and 62 of the Chinese mining regulations of March, 1908, with Article VII of the American treaty of October 8, 1903, see For. Rel., 1908, 151-176.

48. For imposition of taxes or duties on kerosene oil by inland Chinese authorities in addition to those prescribed by treaty, see For. Rel., 1908, 134-145. The question involved most-favored-nation treatment under Article XI of the Sino-Japanese commercial treaty of 1896 and the limits of free port areas under Article 2 of the Anglo-Chinese Nanking treaty of 1858, Article 6 of the Franco-Chinese treaty of 1858, Article 7 of the Franco-Chinese treaty of 1860, the German-Chinese treaty of 1861, and Article II of the Belgian-Chinese treaty of 1865. All the Powers named were involved in the dispute.

49. For the collection of a forced loan from an American naturalized by marriage, Mrs. Josefa Jacoby, in contravention of the treaty of 1867 with Nicaragua, see For. Rel., 1894, 451-460.

The following are American instances in which a presumption of violation was raised:

For the case of a forced loan (Ulrich and Langstroth, 1873) allegedly in violation of Article VIII of the treaty of April 5, 1831, with Mexico, see Moore, Digest, VI, 916-917; but see also opinion of Secretary Evarts, *ibid.*, 917.

As to adducing Article IV of the treaty of 1840 between the United States and Portugal in connection with indirect importations into Portuguese colonies by way of Lisbon, see Moore, Digest, II, 71-72.

For an instance in which Chinese passport regulations in the interior would, if put into execution, have violated Article IX of the British treaty of June 26, 1858, and similar provisions in treaties with all other Powers, see For. Rel., 1894, 152-160.

For the Wheelock case, in which an American citizen was tortured by a Venezuelan official and then repeatedly denied redress in the Venezuelan courts, see Moore, Digest, VI, 321-323, 769-770. The case occurred in 1879, and therefore the allegation of Mr. Evarts that the treatment of the American contravened Article 3, of the treaty of amity, commerce and navigation, and extradition of August 27, 1860, is erroneous; for the treaty terminated on October 22, 1870, pursuant to notice by Venezuela.

For alleged inobservance of Article 14 of the consular convention of 1871 with Germany, growing out of desertions from German ships on the Pacific coast, see For. Rel., 1902, 411-417. The question here involved was largely as to procedure

and also included construction of Sec. 5280, R. S., in harmony with the treaty provision.

For an instance of allegation of violation by acts of a revolutionary force against an American, William Fowks, see Moore, Digest, VI, 993-994. An indemnity was paid and accepted without entering into the merits of Peru's liability under Articles II and XV of the treaty of 1887.

For evidence that cutting submarine telegraphic cables in war time is not a violation of Article XV of the treaty of Paris of March 14, 1884, on the protection of such cables, see Moore, VI, 924-926.

For alleged contravention by the viceroy of Nanking of Article I of the Whangpu river conservancy agreement of September 27, 1905 (For. Rel., 1905, 122), see For. Rel., 1909, 70 ff.

For alleged discrimination against Italian subjects by an ordinance of Richmond, Va., in contravention of Articles II and III of the treaty of February 26, 1871, between the United States and Italy, see For. Rel. 1909, 386-389. A similar instance occurring in South Carolina in 1893 was dealt with in *Cantini et al. v. Tillman et al.*, 54 Fed. Rep. 969.

For the Maiorano case, see For. Rel., 1909, 391-393. Here the Department of State held that a Pennsylvania law denying nonresidents of Pennsylvania the right to institute damage proceedings on account of violence or negligence resulting in death did not violate Articles 3 and 23 of the treaty of February 26, 1871, with Italy. Cf. *Maiorano v. B. & O. R. R. Co.*, 213 U. S. 268 (1909).

EDITORIAL COMMENT

JOHN WATSON FOSTER

AN APPRECIATION

The State of Indiana has a goodly list of soldiers, statesmen, and men of letters to its credit. In not a few instances the reputation which they have achieved has been national; in one, and the most recent, international. It is rare that distinction has been achieved in the three fields of activity, but whether soldier, statesman, or man of letters, or whether they be combined in one, the son of Indiana remains loyal to Indiana, whether he live within the State, at the capital of the nation, or perform the duties assigned to him in the larger world beyond our boundaries. He is never too great for the State; to the State he returns, and in the State he is laid to rest amid the admiration, respect, and regard of his fellow-citizens.

John Watson Foster, known alike as soldier, statesman, and man of letters, was a native of Pike County, State of Indiana, and in Evansville, State of Indiana, he sleeps his last sleep. Born on March 2, 1836, he died on November 15, 1917, and he justified his length of days not merely by good works, which alone would have been a justification, but also by great deeds, which gave him standing at home and abroad and an enduring reputation.

A graduate of Indiana State University, a student of the Harvard Law School, and a lawyer by profession, he served three years and a half in the war between the States, took part in many important engagements in the west, and commanded at various times three different regiments, a brigade, and a division of cavalry. The skill and the courage exhibited at Fort Donelson, where, although a major, he commanded and led the charge of his regiment, attracted the attention of General Grant, won his friendship and regard, and laid

the foundations of that diplomatic career which began in 1872 upon his appointment by President Grant as Envoy Extraordinary and Minister Plenipotentiary to the then distracted Republic of Mexico. The incidents of this appointment the veteran diplomatist himself very modestly relates in the two volumes published in 1909, under the caption of *Diplomatic Memoirs*, an admirable work which supplies the facts of his career and only leaves to other hands its appreciation.

General Foster had been Chairman of the Republican Committee of his State in the presidential campaign of 1872, in which, at first, the tide seemed to be against General Grant, but which, in the end, turned strongly toward him and resulted in his triumphant reelection. As Governor of Indiana, Oliver P. Morton had appointed Mr. Foster, as he then was, a major of volunteers, without solicitation and without his knowledge. Governor Morton was now United States Senator, and, realizing the obligation of the party to General Foster and desiring to recognize it by an appointment, asked him to choose the position which he most preferred and to give himself no worry about his appointment to it. The General was somewhat taken aback at this mark of confidence in his abilities, which he never rated so highly as his friends. He asked time to consult with Mrs. Foster, whom he had left to go into the army, but who, for fifty-eight years, administered to his comfort, making a great career possible, notwithstanding his delicate constitution and precarious health. They came to the conclusion that "a brief residence in Europe would be both pleasant and useful," and they picked upon the ministry to Switzerland, which General Foster says in his *Memoirs* "was in the lowest grade of our diplomatic service." Switzerland was promised, but Mexico was free; and in this casual, indeed accidental way, he began that diplomatic career which has given him an abiding place in the history of his country.

During his seven years in Mexico that country passed through the storm and stress of revolution and settled down, with a brief interval, to a policy of order, if not of law, under President Diaz, relapsing, as General Foster feared and for the reasons he stated, into anarchy after the strong hand was stayed. Commenting upon his service in the army, he had said, "My military life greatly enlarged my knowledge of men and gave me fuller confidence in myself." And no better example can be found of his knowledge of men and the reason why his countrymen had confidence in him than his analysis of the Diaz régime, its nature and its consequences:

It would have been a wise and patriotic act for General Diaz to have retired from the Presidency at the end of his second term, leaving the prohibitive clause of the Constitution in force. He would then have been in a position to guarantee a peaceful election of a successor and a continuance of the good order and prosperity which he had established. The people also might have had an opportunity to test their ability to conduct a government by means of a free and untrammelled exercise of the electoral franchise, a condition as yet unknown to Mexico. The benevolent autocracy under his administration has resulted in great prosperity for the country, but it has done little to educate the masses of the people in their duties under a republican government.

The biographer of Pericles, the greatest of the republican rulers of Athens, in describing the disorders which followed his death, makes these comments: "In his determination to be the foremost man in the city, he left no room for a second. . . . Under his shadow no fresh shoots sprang. He taught the people to follow him as leader, and left no one behind to lead them; he destroyed their independence—or at least the mutual play of opposite forces—and when he died came 'the deluge.' There was no one who could succeed him. A democracy without great men is a dangerous democracy."¹

While still in Mexico, General Foster was, without consultation, and indeed without his knowledge, notified by telegram that he was to be transferred to the Russian mission. On January 19, 1880, President Hayes nominated him for that post, and General Foster recalls with pleasure that his name was sent to the Senate with that of Mr. James Russell Lowell, transferred from Madrid to London. He arrived in Russia on May 28, later than was expected, owing to the fact that he stayed in Mexico to receive General Grant, then visiting the country. He remained in Russia during the balance of 1880 and in August, 1881, he obtained a leave of absence to visit the United States, which, however, proved to be not only his farewell to Russia but his renunciation of diplomacy as a permanent career. For, although he later filled posts temporarily and was sent on diplomatic missions, they were as incidents or as interruptions in the career of a publicist and international lawyer,—not to be sought, yet not to be avoided if offered.

Having stated with frankness in his *Memoirs* the reasons which led him to enter, so with equal candor he gives the reasons which caused him to leave, the diplomatic service. Thus, he says:

After reaching home I came to the conclusion that the interests of my family and due consideration for my own future demanded my retirement from office. I had been continuously in the Diplomatic Service for nearly nine years. They

¹ *Diplomatic Memoirs*, Vol. I, pp. 106-107.

had proved very interesting and instructive and I had reason to be satisfied with my labors. But under our system of government I could not hope to make the Diplomatic Service a life career. I was giving to the Government the best years of my life, and I thought it better to choose my own time for retirement than to have it determined by a change of administration.

I had a growing family and I preferred to give them an education in our own country rather than abroad. Financial considerations also influenced my determination. Before entering the Service I had not accumulated a competency, and the salary received from the Government required me to exercise economy in office. I did not consider it either prudent or honest to adopt a style of living beyond my income. I do not advocate large salaries for our diplomatic representatives, but permanent houses should be provided for them, and there should be such a moderate increase in their salaries as would justify men of talents without fortunes entering the Service. Lavish display is not becoming in the representatives of a democratic government, but they should be enabled to live comfortably and in becoming style without drawing upon their private means or credit.¹

In an earlier portion of his *Memoirs*, in connection with his entrance upon "the highest and most difficult mission on the American hemisphere," for such the Mexican mission then was, he makes the following observation upon diplomacy as a career, wise in itself and the fruit of his experience, which is an appropriate pendant to his observation upon leaving the service:

I am a strong advocate for the establishment of a regular career for the diplomatic service of the United States; I would have all Secretaries of Legation enter the service through a competitive examination; continue in office during good behavior; and, as they should prove worthy, have them promoted to Ministers. But I doubt whether the time will ever come when our Government will think it wise to confine the appointment of Ministers and Ambassadors entirely to promotions from the posts of Secretary. It has never been so in the Governments of Europe where the regular diplomatic career has long been an established system. Many of their most useful and distinguished diplomats have been those who never entered the service through a competitive examination, but who were appointed from other branches of the public service or from private life.²

By resigning, on November 1, 1881, from the mission to Russia, to settle in Washington and to engage in the practice of law, particularly of international law, in which he prospered and acquired fame, he doubtless thought that he had severed his relations with Russia; but in this he was mistaken, and it is probably the only mistake with which he can be taxed in his diplomatic career. He was sent on special mission by President McKinley in 1897. And if he really thought that he

¹ *Diplomatic Memoirs*, Vol. I, pp. 213-214.

² *Ibid.*, pp. 12-13.

was not again to hold a regular diplomatic post, his judgment was again at fault, for President Arthur, who had regretfully accepted his resignation as Minister to Russia, insisted that he proceed to Spain, which, however, was in the nature of a special mission, although it was not confined to a single purpose with a temporary residence. He yielded to the President's request, and from 1883 to 1885 he served as American Minister to Spain, which in 1891 he visited a second time, as in the case of Russia, on special mission, demonstrating that his services were acceptable both to those countries and to the United States.

In the interval, however, between these two missions, General Foster had come to his own. In 1892, upon the resignation of Mr. Blaine as Secretary of State, General Foster was appointed by President Harrison, a citizen of his own State, to succeed that distinguished statesman; and it is interesting to note, in this connection, that it was not the first time that General Foster had been considered for the cabinet. President Hayes wanted the State of Indiana to be represented in his cabinet, and, unconscious of the threatened honor, General Foster was, as appears from Mr. Williams's *Life of President Hayes*, the President's preference. "Finally," to quote the President's biographer, "the choice narrowed down to John W. Foster, at that time Minister to Mexico, and Richard W. Thompson, famous since 1840 for his political oratory. . . . Of these two Mr. Hayes was inclined to prefer General Foster, the younger, abler, and more active man. But as it would take so long for him to reach Washington, and as it was desirable that all members of the Cabinet should be installed at once, Colonel Thompson won the distinction."¹ But in 1892 General Foster was not in Mexico; he was in Washington, and he was appointed and entered at once upon the performance of his duties.

However, he did not long remain in this post, inasmuch as the Bering Sea controversy between Great Britain and the United States, a legacy of his predecessor, was very difficult, very perplexing, and required a tried and deft hand for its settlement. It was submitted to arbitration, and General Foster resigned the Secretaryship of State in 1893 in order to take charge of the case on behalf of the United States. Two years later he was drafted into service by the Chinese Government, then at war with Japan and anxious to extricate itself from the toils of the Island Empire, which, in a single campaign, had defeated that immense and venerable country. General Foster accepted the call and

¹ C. R. Williams, *The Life of Rutherford Birchard Hayes*, Vol. II, p. 23.

acted as adviser to the Chinese plenipotentiaries in the negotiations ending in the treaty of peace between the two countries — with such apparent satisfaction to his imperial client that, without solicitation or knowledge, China appointed him a member of its delegation to the Second Hague Peace Conference of 1907. In the interval between these dates, General Foster's practice of law was at least twice interrupted by his own country: in 1898, by his appointment as a member of the Anglo-American high commission to settle the disputes between Canada and the United States, and in 1903, as agent for the United States in the Alaskan boundary dispute.

Accidental and casual as his entry upon diplomacy, in which he achieved, however, solid and enduring distinction, was his entry into the domain of letters, in which he likewise succeeded. Urged to deliver a series of lectures on diplomacy in Columbian (now George Washington) University, he yielded, and what was an incident in his career as a diplomat and international lawyer has become the foundation of what promises to be an enduring reputation, for his lectures have been published as *A Century of American Diplomacy*, just as Kent's lectures, delivered at Columbia, were published and have remained a standard work, under the title of *Commentaries on American Law*.

The *Century* is a remarkable book. Published in 1900, it is as fresh as the day it issued from the press. The learned author wisely limited himself to a field, not, indeed, closed to controversy, but the great lines of which were drawn and within which he could move unembarrassed and at his ease. It begins, of course, with the 4th day of July, 1776, when the Declaration of Independence was proclaimed by a sturdy race and representatives worthy of the future of their country. It ended with 1876, a period when the United States had been reunited after the Civil War, through which it had passed but a decade before, and when our own fathers looked with wistful eyes, not to the past but forward to the second century of the Republic and to the future which time has in store for us.

Chronologically, and in the form of a narrative, General Foster sketched with a masterly hand our diplomatic relations, confined, at first, to France, our first and for more than a century our only ally, until our relations broadened out and encircled the world. And he appropriately ended his survey with a statement of the origin and nature of the Monroe Doctrine, which should be treated as a whole,

THE LUXBURG SECRET CORRESPONDENCE

Among the surprising revelations made by the Department of State of the United States regarding the animus and conduct of certain German officials, a distinct place must be assigned to the dispatches of Count Luxburg, the German *chargé d'affaires* at Buenos Aires, addressed to the Foreign Office at Berlin. Additional interest is lent to these dispatches by the fact that they were sent by the Swedish Legation at Buenos Aires as its own official messages addressed to the Swedish Foreign Office at Stockholm for transmission to Berlin.

The text of these communications is of such an exceptional character, and the bearing of its substance upon the method of transmission is so important, that it is deemed desirable to print these messages here in full, as given out by the Secretary of State.

The following are English translations of the German text:

May 19, 1917. No. 32. This government has now released German and Austrian ships in which hitherto a guard had been placed. In consequence of the settlement of the *Monte (Protegido)* case, there has been a great change in public feeling. Government will in future only clear Argentine ships as far as Las Palmas. I beg that the small steamers *Oran* and *Guazo*, thirty-first January (meaning, which sailed 31st), 300 tons, which are (now) nearing Bordeaux with a view to change the flag, may be spared if possible, or else sunk without a trace being left (*spürlos versenkt*). LUXBURG.

July 3, 1917. No. 59. I learn from a reliable source that the Acting Minister for Foreign Affairs, who is a notorious ass and Anglophile, declared in a secret session of the Senate that Argentine would demand from Berlin a promise not to sink more Argentine ships. If not agreed to, relations would be broken off. I recommend refusal and, if necessary, calling in the mediation of Spain. LUXBURG.

July 7, 1917. No. 63. Our attitude toward Brazil has created the impression here that our easygoing good nature can be counted on. This is dangerous in South America where the people under thin veneer are Indians. A submarine squadron with full powers to me might probably still save the situation. I request instructions as to whether after a rupture of relations legation is to start for home or to remove to Paraguay or possibly Chile. The naval attaché will doubtless go to Santiago de Chile. (Signed) LUXBURG.

July 9, 1917. No. 64. Without showing any tendency to make concessions, postpone reply to Argentine note until receipt of further reports. A change of ministry is probable. As regards Argentine steamers, I recommend either compelling them to turn back, sinking them without leaving any traces, or letting them through. They are all quite small. LUXBURG.

August 4, 1917. No. 89. I am convinced that we shall be able to carry through our principal political aims in South America, the maintenance of open market in

Argentina and the reorganization of South Brazil equally well whether with or against Argentina. Please cultivate friendship with Chile. The announcement of a visit of a submarine squadron to salute the President would even now exercise decisive influence on the situation in South America. Prospect excellent for wheat harvest in December. (Signed) LUXBURG.

Regarding the incredible brutality of the proposal to sink without a trace the vessels of a friendly country, the insulting epithets applied to its officials, the revelation of utter disregard of any relations between the Imperial Government and the Republic to which Count Luxburg was accredited except those affecting its own military and commercial advantage, and the secret political aims of the German Empire in South America, it is unnecessary here to offer comment. They speak for themselves. Hardly more necessary is it to advert to the total absence of moral compunctions in the official to whom the Imperial Government had intrusted its interests in Argentina.

The opinion which Count Luxburg entertained regarding the motives of his own government is, however, deserving of a passing notice. So confident is he of the predisposition of the Imperial authorities to commit crime, and to take inhuman precautions to conceal it, that he not only suggests the total destruction of the crews of the little non-combatant vessels of the country to which he is accredited, innocently pursuing their course upon the high seas, but points out the desirability of leaving *no trace* — not even the possibility of the rescue of one poor telltale life — to reveal the fact of this wanton wholesale murder after it has occurred. No depth of perversity is left unsounded in this estimate of what the German Government is capable of doing. Conscious of the hideous nature of his proposal, this officer assumes not merely that his government is ready to commit this act of murder, but to render itself able successfully to lie out of it afterward by destroying every scrap of evidence of its guilt. It is difficult to believe that a civilized government could receive from a subordinate a communication involving such implications without severe rebuke, unless it had already justified these assumptions by its previous instructions; thus assuring its agents that such suggestions would be rewarded with its approbation. Such connivance places the official action of such a government outside the sphere of honorable diplomacy and renders extremely difficult future confidence in its professions of amity.

There is, however, another aspect of this correspondence more interesting to the international jurist than this revolting predisposition

to criminal procedure. Whatever may be said of the Imperial Government and its officials, whose conduct did not even pretend to conform to the principles of international law, the Swedish Government, as a neutral, was under obligation to respect both neutral and belligerent rights.

The following questions, therefore, arise:

How far was the Swedish Legation morally *particeps criminis* in promoting murder on the high seas by transmitting these dispatches?

Was there in the act of this transmission a form of unneutral service regarding the belligerents that would constitute a violation of international law?

In extenuation of the course taken by Baron Lowen, the Swedish Minister who sent these messages to the Swedish Foreign Office, as if they were a part of his own legitimate secret correspondence with his government, it may be said that, from his point of view, it was merely an act of personal friendship to a colleague who was deprived of other means of communication with his government. Not knowing, as may be the case, the contents of the dispatches he was forwarding, how, it may be asked, could he justly be held accountable for their perfidious and criminal character?

Such an extenuation does not, however, constitute a defensible excuse. Assuming that the Minister was entirely ignorant of the contents of the dispatches, it was *prima facie* probable that they contained information either hostile to a belligerent, or in some way helpful to the Imperial Government, or affecting the interests of a neutral. Whatever the nature of his information, the transmitter of these dispatches under the cover of secrecy was rendering a service which his German colleague regarded of value to his government, which was then engaged in war. He knew also that the act he was performing was not merely one of personal friendship, and that it involved the responsibility of his government for the delivery of secret dispatches which would subject a ship caught conveying them to confiscation.

Another and a safer course was open to him, — the course taken by a former American Minister at The Hague, Dr. Henry Van Dyke, when the Imperial Austro-Hungarian Legation asked him to transmit a message in the American diplomatic code to the American Minister at Brussels for delivery to the Austro-Hungarian Legation which still remained in Belgium. "The first and last parts of the message," writes

Dr. Van Dyke, "were in plain language, good English, quite innocent and proper; *but the kernel of the dispatch was written in the numerical cipher of Vienna, which of course I was unable to read.* I drew attention to this, and asked mildly how I could be expected to put this passage into our code without knowing what the words were. The answer was that it would not be necessary to code this passage; it could be transmitted in numbers just as it stood; the Austro-Hungarian *chargé d'affaires* at Brussels would understand it."

"Quite so," replied Dr. Van Dyke, "but you see the point is that I do not understand it." And without giving the slightest offense to his colleague, who admitted that his point was "perfectly clear and indisputable," he declined to transmit the dispatch, on the ground, as he alleged, that the American instructions explicitly forbid sending a message in two codes.

The sending of such a message, even though the use of two codes were not forbidden, would imply collusion with a belligerent and would constitute a clear case of unneutral service. Not only so, the ostensible message being in appearance what it is not, and the real message being conveyed under cover of concealment, it is an act of unneutral service accompanied by fraud. The mere fact that the German *chargé d'affaires* appealed to the Swedish Legation to forward his dispatches under the cover of Swedish dispatches is a confession that the messages conveyed could not be safely transmitted without such aid.

In the case of a ship performing precisely this service, namely, the secret transmission of dispatches, the penalty, as intimated above, if captured, is confiscation. The reasons for this, as stated by Lord Stowell, do not affect the nature of the medium used for the purpose of transmission. They apply to a cable as well as to a ship, but with the difference that the act in the case of a ship is liable to detection and penalty, while the transmission of a cablegram under the cover of the diplomatic immunity possessed by another government runs only a slight risk of discovery, and no risk of property confiscation. The guilt of such transmission is increased by this circumstance; because while the offense, in principle and effect, is the same, the dishonor of it is evidently greater.

The nature of the offense is well pointed out by Lord Stowell in the case of the *Atalanta* (6 Robinson, 440), a Bremen ship, captured on a voyage from Batavia to Bremen, whose master and one of the supercargoes had taken on board at the Isle of France a package of

French Government dispatches, afterward found concealed in the possession of the second supercargo.

In his judgment Lord Stowell says:

If a war intervenes, and the other belligerent prevails to interrupt communication, any person stepping in to lend himself to the same purpose (to establish communication), under the privilege of an ostensible neutral character, does, in fact, place himself in the service of the enemy-state, and is justly to be considered in that character. Nor let it be supposed that it is an act of light and casual importance. The consequence of such a service is indefinite, infinitely beyond the effect of any contraband that can be conveyed. The carrying of two or three cargoes of stores is necessarily an assistance of a limited nature; but in the transmission of dispatches may be conveyed the entire plan of a campaign that may defeat all the projects of the other belligerent in that quarter of the world. . . . It is a service therefore which, in whatever degree it exists, can only be considered in one character, as an act of the most noxious and hostile nature. . . . I have the direct authority of the Superior Court for pronouncing that the carrying of dispatches of the enemy brings on the confiscation of the vehicle so employed.

In conclusion, the learned jurist holds that the offense of carrying dispatches is greater than that of carrying contraband. To talk of confiscating dispatches is ridiculous, as it would inflict no loss on the guilty person. In order, therefore, to signalize the enormity of the offense, he pronounces both ship and cargo subject to condemnation.

Where, in the case of an equal offense but in the absence of penalty, is a victim of unneutral service in the form of the secret forwarding of dispatches by cable or telegraph to find redress? Before what tribunal may such offenses be brought? What means are to be employed to prevent the occurrence of such offenses?

These are questions of too wide a scope and too great complexity to be discussed here, but they will no doubt receive careful consideration when competent authorities assemble to deliberate concerning those revisions and enlargements of the law of nations which the new conditions of international life imposed by electrical transmission of intelligence will require. In the meantime the use to be made of the new means of secret communication offers an opportunity to exercise the self-respect and good faith of governments and their agents in observing the spirit of the law, by carefully avoiding a form of unneutral service between belligerents which is peculiarly odious, because it may be rendered with comparative impunity under the protection of secrecy. It is, perhaps, an indication of what the mature judgment of governments upon this subject will be, that Baron Lowen, notwithstanding

the declaration of the Swedish Foreign Minister that there was "no responsibility for the tenor of the German messages," is reported to have departed from Buenos Aires without making the customary farewell visits to the officials there, which seems to imply that he was leaving in disgrace.

DAVID JAYNE HILL.

ARGENTINA AND GERMANY: DR. DRAGO'S VIEWS

La Razón, a great daily paper of Buenos Aires, in its issue of April 10, 1917, invited the most prominent men of Argentina to express their opinions on the attitude which their country ought to assume and observe in the present European War. Among others, Dr. Luis M. Drago, statesman and publicist, was asked, and the opinion which he gave was not only valuable because of his political position and the intellectual standing of its author, but also on account of his international reputation, founded by his note of December 29, 1902, creating the Drago doctrine, increased, if possible, as delegate of his country to the Second Hague Peace Conference, and maintained as a member of the so-called Permanent Court of Arbitration at The Hague. Dr. Drago's opinion; therefore, of interest to his countrymen, has also an international interest, and for this reason a translation of it follows in full:

My opinion, as I had occasion to state it to several persons closely related to the government, has been, from the start, that we should have followed the United States when that nation came to the conclusion that it must sever diplomatic relations with the German Empire. The submarine blockade and the threatening intimation made to us by forbidding Argentine vessels and citizens to navigate in a war zone arbitrarily marked out in the high seas, in open violation of the most elemental principles of international law, should have amply justified such an attitude. To-day the situation is still more serious and grave. The United States are in a state of war with the German Empire. The conflict assumes the very form in which it is presented in President Wilson's message: democracy against absolutism.

How could an American nation stand aloof from this conflict and retain the status of a neutral without abhorring its past and at the same time jeopardizing its present and its future? Brazil is preparing to assume its place among the belligerents, and very soon other states of America will follow her. Shall this Republic, by breaking the bonds of solidarity with its Latin sisters and its traditional policy, be able to continue in a state of isolation which nothing can justify and which would, furthermore, be full of dangers?

I believe, therefore, that we must very quickly make ready to swell the ranks of those who uphold the rights of nations as against the oppression of absolute governments, and thus show, once more, in the name of justice, the material and

moral union of this continent, for the defense of their essential rights of independence and sovereignty, which, in the end, are nothing else than the assertion of democratic principles in international relations.

The present number of the JOURNAL¹ contains an editorial comment by a distinguished North American publicist on the Luxburg incident. The JOURNAL offers, in addition, the following translation of an opinion of Dr. Drago, given to the press of Buenos Aires on September 13, 1917:

The telegram of Count Luxburg cannot be considered as an individual act affecting only himself personally. It was the result of an intimate collaboration between him and his government, and it was part and parcel of an exchange of data, opinions and views, of a "correspondence," properly so-called, intended to determine the conduct of the Empire in its naval policy in regard to us. It is not the minister accredited here who has ceased to be *persona grata* to this country; it is the German Government itself, which received the monstrous advice to sink Argentine vessels without leaving a trace, that is directly responsible for the abusive conduct of its agent, who, long after the date of the telegram, has continued in the discharge of his double duties of diplomatic envoy and of a spy attached to the Swedish Legation.

The German Government seems to have received with pleasure the secret communications of the agent, who has treated us so contemptuously, if we are to judge by the fact that he was retained and encouraged in his office, and that it was through him that the case of the *Toro* was finally settled by which the good faith of our Foreign Office was betrayed. It must be recalled that the Imperial Government formally proposed that the negotiations for this settlement should be carried on in Buenos Aires with Count Luxburg, the author of the telegram.

It is not improbable that the sinister counsel of the minister was followed in the case of the Argentine steamer *Curruvalén*, which mysteriously disappeared a few months ago "without leaving a trace" while carrying a cargo of coal between Liverpool and Bahia Blanca.

Everything points to the belief that the recent explanations and promises of Germany had no other purpose than the preservation in this country of its extensive South American spy agencies, with the help of the Swedish Legation; and if such a government should now give us new explanations and new protestations of friendship, it would only mean that it had another hidden purpose.

If many months ago I thought, as I took occasion to state publicly, that we should have severed our relations with Germany, when she decreed her inadmissible blockade, I am to-day still more convinced that it is not possible to maintain cordial relations with a country which employs such methods and such agents.

The severance of our relations with Germany, while gratifying to our national dignity, would place us beside the great democratic nations of the world, and would strengthen the bonds of solidarity with our sister Republics of this continent.

Doctors are proverbially said to disagree. In the present instance, in the interest of the United States of America, it is pleasing to note

¹ Page 135.

that they are in accord, and that international policy and international law, as stated by Dr. Hill in Washington, is the same as that stated by Dr. Drago in Buenos Aires.

J. B. S.

THE ESPIONAGE ACT

The so-called Espionage Act,¹ approved June 15, 1917, embraces much more than its popular title would indicate. Technically it is "An Act to punish acts of interference with the foreign relations, neutrality, and the foreign commerce of the United States, to punish espionage and better to enforce the criminal laws of the United States, and for other purposes." Its provisions concern numerous unrelated matters of vast importance to the nation, whether a belligerent or a neutral. These are responsive to recommendations of the Attorney General submitted in 1916, after having been concurred in by the Secretary of State and by the Joint State and Navy Neutrality Board.² The Act contains thirteen titles.

The sections relating to espionage are designed broadly to prohibit and render criminal, attempts to obtain information respecting any aspect of the national defense for a use injurious to the United States, as well as attempts to communicate such information to foreign governments, or to any factions or parties within a foreign country, whether recognized or unrecognized by the United States. It is provided that when the United States is at war, whoever shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of its military or naval forces, or to promote the success of its enemies, and whoever, at such a time, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty in such forces, or shall willfully obstruct the recruiting or enlistment service, to the injury thereof or of the United States, shall be subjected to punishment. The harboring or concealing of any person who, there is reasonable ground to believe, has committed or is about to commit an offense under this title is rendered criminal.

The serious damage inflicted upon German and Austrian vessels in American ports by their officers and crews early in 1917 rendered it important that by appropriate legislation the President should be en-

¹ Printed in SUPPLEMENT to this JOURNAL for October, 1917, p. 178.

² The recommendations referred to are printed in an editorial in this JOURNAL for July, 1916, pp. 602-606.

abled, by proclaiming a national emergency in case of actual or threatened war, insurrection, invasion, or other disturbance of the international relations of the country, to control and safeguard any foreign or domestic vessel within the territorial waters of the United States. Title 2 of the Act makes appropriate provision to that end, conferring ample power upon the President and subjecting to heavy penalties the owner, master, or other person in charge of or commanding any private vessel who willfully causes or permits its destruction or injury, or knowingly permits the vessel to be used as a place of resort for persons conspiring with one another to commit any offense against the United States or in violation of its treaties, or of its obligations "under the law of nations," or to defraud the United States, or who knowingly permits the vessel "to be used in violation of the rights and obligations of the United States under the law of nations." The President is, moreover, authorized to employ the land or naval forces of the United States to carry out the purposes of the title.

In order to simplify the prosecution and thereby facilitate the conviction of persons tampering with the motive power or instrumentalities of navigation of vessels engaged in foreign commerce, or of persons placing bombs or explosives on such ships, or of individuals setting fire to them, or of otherwise interfering with the safety on the high seas of American vessels with their occupants and cargoes, the provisions of the Criminal Code of 1909 were wisely amended and amplified. Again, interference with foreign commerce, that is, with the exportation to foreign countries of articles from the United States, by injuring or destroying, by fire or explosives, such articles, or the places where they might be while in such foreign commerce, was forbidden and made punishable.

It seems strange that important additions by way of amendment to the neutrality laws of the United States should have been made at a time when the nation itself was a belligerent. Title 5 embraces eleven sections respecting the "enforcement of neutrality." The first four of these are operative only "during a war in which the United States is a neutral nation." In this respect the title is unique; for it will be recalled that the Act of April 20, 1818, embracing the so-called neutrality laws of the United States, which are embodied in the Criminal Code of 1909 (§§ 9 to 18), made no mention of the word "neutrality," and have been repeatedly enforced for the purpose of preventing offenses against friendly Powers attempting to suppress insurgents not recog-

nized by the United States as belligerents. (It should be observed, however, that the joint resolution of March 4, 1915, which was repealed by the present Act of June 15, 1917, contemplated likewise the existence of a war to which the United States was not a party as a condition precedent to its operation.)

The design of the present law with respect to the enforcement of neutrality was to enable the nation, when a neutral, better to respond to its obligations as such, especially as acknowledged in certain provisions of the Hague Convention of 1907 concerning the Rights and Duties of Neutral Powers in Naval War, and that by definitely enlarging the powers of the Executive. In the Act of 1818 these were somewhat vaguely expressed. Under the present law (in modification of § 15 of the Criminal Code), the President is empowered to employ such part of the land or naval forces of the United States, or of the militia thereof, as he may deem necessary to compel any foreign vessel to depart from the United States or any of its possessions, "in all cases in which, by the law of nations or the treaties of the United States, it ought not to remain, and to detain or prevent any foreign vessel from so departing in all cases in which, by the law of nations or the treaties of the United States it is not entitled to depart." This provision is not conditioned upon the existence of a war with respect to which the United States is a neutral.

When the United States is a neutral, the President is given broad powers, both by withholding clearance from a vessel requiring it, and by service of specified notice in the case of a vessel not requiring it, to forbid the departure from the United States of any ship which there is reasonable cause to believe is about to carry fuel, arms, ammunition, men, supplies, dispatches, or information to any warship, tender, or supply ship of a belligerent nation in violation of the laws, treaties, or obligations of the United States under the law of nations. Equally important and of greatest value is the provision enabling the President, "or any person thereunto authorized by him," to detain any armed vessel owned wholly or in part by American citizens, or any vessel, domestic or foreign (other than one which has entered the ports of the United States as a public vessel), which is manifestly built for warlike purposes or has been converted or adapted from a private vessel to one suitable for warlike use, until proof satisfactory to the President is given that the vessel will not be employed to commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of

any colony, district, or people with which the United States is at peace, and that the vessel will not be sold or delivered to any belligerent nation or agency thereof either within the jurisdiction of the United States, or, having left it, upon the high seas.

In case of a war in which the United States is a neutral, it is rendered unlawful to send out of its jurisdiction any vessel built, armed, or equipped as a vessel of war, or converted from a private vessel into one, with any intent or under any agreement or contract, written or oral, that the vessel shall be delivered to a belligerent nation or agency thereof, or with reasonable cause to believe that the vessel will be employed in such belligerent service after its departure.

In order to enable the nation better to comply with the requirements of international law with respect to the treatment of the crews of interned warships, provision is made for the arrest and confinement of interned members of belligerent forces who endeavor to leave or escape from the limits of internment without permission.

It should be observed that § 13 of the Criminal Code with respect to the organization of military expeditions against a friendly Power is somewhat modified and extended so as to be applicable to naval as well as to military expeditions.

Elaborate provisions are made under Title 6 to facilitate the seizure of arms and other articles intended for export, under circumstances when exportation is in violation of law. A procedure by judicial process is specified. In Title 7, power is conferred upon the President during the present war, upon finding that the public safety so requires, to render unlawful the exportation from the United States of articles which he may mention in a proclamation. His exercise of this power is appropriately facilitated by authority conferred upon collectors of customs to prevent the departure of vessels about to carry out of the United States articles in violation of the law.

Of much significance are the provisions of Title 8 respecting the disturbance of foreign relations. One who willfully and knowingly makes an untrue statement in relation to a dispute between a foreign government and the United States, and that under oath before a person authorized to administer oaths, which the affiant has knowledge or reason to believe may be used to influence the measures or conduct of any foreign government or agent thereof, "to the injury of the United States," or with a view to influence any measure or action of the Government of the United States, or any branch thereof, to its

injury, shall be subjected to punishment. Again, it is wisely rendered punishable to impersonate for a fraudulent purpose a diplomatic or consular or other official of a foreign government duly accredited as such to the Government of the United States. In order to safeguard the transaction of diplomatic and consular business, it is provided that one who, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Secretary of State, shall be subjected to fine or imprisonment, or both. The words "foreign government" as used in the Act (and also in certain specified sections of the Penal Code), are said to embrace any government, faction, or body of insurgents within a country with which the United States is at peace, and whether or not recognized by the United States as a government. Of no small significance is § 5 of the same title, rendering criminal a conspiracy within the jurisdiction of the United States to injure or destroy specific property within a foreign country and belonging to a foreign government or to any political subdivision thereof, with which the United States is at peace, or any railroad, canal, bridge, or other public utility so situated. It is provided, moreover, that if a conspirator commits an act within the jurisdiction of the United States "to effect the object of the conspiracy," he shall be subjected to punishment.

Elaborate and sensible provisions are made for the safeguarding of the issuance of American passports, as well as for the punishment of those who make fraudulent use of passports or counterfeit the same. Lack of space forbids discussion of the titles relative to the counterfeiting of governmental seals, the issuance of search warrants, and the use of the mails.

No one outside of the Department of Justice can state authoritatively what titles of the Act, or what provisions thereof, are, or may be, most useful to the United States. Of special interest and of utmost significance are those sections designed to facilitate the effort of the state to fulfill by executive action its obligations as a neutral. It is believed that the procedure established greatly increases the efficacy of the means theoretically at the disposal of the nation to perform duties of prevention arising from maritime warfare, and acknowledged to be imposed by international law, if not by conventions supposedly declaratory of it.

CHARLES CHENEY HYDE.

THE CUSTODIAN UNDER THE TRADING WITH THE ENEMY ACTS

Anglo-American jurisprudence makes domicile the test of enemy character. Thus an American citizen, resident today in Germany and making no effort to withdraw, is legally an enemy. And *vice versa*, German subjects now domiciled in the United States, if they observe the laws and comply with such regulations for the national safety as the President may prescribe, are not regarded as enemies. Now, property follows the status of its owner. Therefore, the property of the American aforesaid in Germany is enemy's property. If captured at sea, for instance, on an enemy's ship, it is good prize. But there is an inconsistency in this rule. Though all the property of an enemy house of trade is enemy's property, even if certain of its partners are neutral, in a neutral house the share of an enemy subject is not exempt from capture. Nationality has replaced domicile in the determination of its character.

As we do not regard Germans here domiciled as enemies, their property likewise is not enemy's property and is not confiscable. But owing to the intricacies and complexities of modern commerce, there may be, nevertheless, enemy's property in great variety within our territory; their goods are here on sale; stocks and bonds evidence their share in our corporations; branches of their banks have been established here; their insurance companies for years have taken risks here; under their patents our licensees are operating; an American heiress marries an enemy subject and her income is in question. No government can permit its enemy to draw resources for the prosecution of the war from itself. All this makes a third class of property to be considered.

For a good part of a century, certain treaty provisions also were frequent which should be added to this summary of the usage as to enemy's property before the Great War. These gave time and privileges for the withdrawal of persons and property.

How does this usage compare with the rules under which we are living today? These rules are set forth in the Trading with the Enemy Act,¹ approved October 6, 1917, which will be discussed in a later issue of the JOURNAL. This comment is confined to that provision of the Act which is comparatively new, as offering a solution of the problem

¹ Printed in SUPPLEMENT to this JOURNAL, p. 27.

how to do justice to enemy property rights and yet prevent their use against oneself, by impounding on a great scale, in charge of a public official who shall account after the war for all property taken over. This official is the Alien Property Custodian, "vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act."

Before enumerating the scope of this official's duties, however, it will be convenient to call attention to certain variants of the definition of "enemies" under the Act, which bear upon the Custodian's duties. The first is that, under the Act "enemy" and "ally of an enemy" are lumped together. Thus, since the declaration of war with Austria, the Act applies to those subjects of Bulgaria and of Turkey who may own property here. Another is that residents of territory occupied by an enemy are classed as enemy's subjects for the purposes of the Act. Therefore, a Belgian capitalist owning shares in an American concern is not differentiated from a Berliner. And third, enemy subjects wherever resident are included; a German coffee planter in Brazil, for instance, if the President shall so determine.

Having thus defined enemies, enemy allies, and the property of both, the Act prescribes the duties of the Alien Property Custodian with regard to them. He is to receive enemy's money and property transferred to him, and to administer and account for it, giving proper security. He is appointed by the President, his many assistants being under the regulations of the Civil Service Commission. With him is to be filed a list of officers and shareholders in American companies who are known or suspected to be enemies, together with the amount of their holdings. Trustees and agents with enemy principals, and debtors owing money to enemy creditors, must report to him also as to said debt due or trust property received. And unless licensed to the contrary, such fiduciary will actually pay over such property or money to the Custodian, this payment to be a full discharge.

In case of contracts with enemies abrogated by war, notice thereof is deposited with the Custodian. Claimants to property deposited with the Custodian may sue in equity, making him a defendant, in the United States court of the claimant's district. The users of enemy patents, trade-marks, and copyrights must account to the President and pay not to exceed 5 per cent of their gross sales to the Custodian, with liberal provision for a settlement after the war. The regulation of enemy-

owned patents is very favorable to the owner, for he may both take out patents during hostilities and protect against infringement by suit.

Enemy money coming into the hands of the Custodian is to be turned over by him into the United States Treasury and may be invested in Government securities. But other property in the Custodian's keeping is to be duly administered and its income placed in the Treasury. To this end, on his demand, stock or other evidences of beneficial interest of enemy ownership must be transferred to the Custodian's account.

This is a brief summary of the part played by the Custodian in this vast impounding of the property of enemies within the jurisdiction of the United States, the evident intention being that after the war there shall be an accounting and refunding, although the Act says all such claims "shall be settled as Congress shall direct." He represents a supplemental part of the machinery of the process by which a middle course is steered between the ancient harshness of confiscation and the modern idea that foreign property rights have been encouraged to enter a foreign state with the implication of fair treatment.

The Custodian named by the President for the purposes of the Act was A. Mitchell Palmer, Esq. The date set within which return of enemies' money and property must be made to the Custodian was December 5. He has publicly stated that its amount already exceeds six hundred million. The staff in charge of this vast and complicated business numbered 250, with a prospect of increase.

The machinery thus created was set in motion by Executive Order ¹ on October 29, 1917. A form of report is provided and specific instructions are given as to (1) who must make the report, and (2) what must be reported, with penalty for failure. These instructions are too long to warrant quoting here; they are well and clearly expressed, but the Act itself is clumsily phrased. One clause adds to the Act's comprehensiveness: "If a person, even an American citizen, is resident within the territory of an enemy or ally of an enemy, including that occupied by its military and naval forces, his property must be reported."

Corresponding to this Trading with the Enemy Act and the employment of a Custodian under it, we learn by the official *Reichsanzeiger* "that the ordinances dated October 7, 1915, governing compulsory notification to the authorities of foreign property in Germany, have been extended, together with the penalties in cases of noncompliance,"

¹ Printed in SUPPLEMENT to this JOURNAL, p. 60.

to property owned by citizens of the United States as from November 20," such property to be placed under the Trusteeship of the German Government. The term "property" includes shares in German enterprises within the empire and legal claims upon persons domiciled there. The immediate object of this registration is declared to be "to prevent the illegal transfer or liquidation of American property held within the limits of the empire, for the purpose of removing it from official control and conveying its proceeds abroad. These restrictions do not apply to such disposition as Americans may desire to make of their property within Germany. They, however, are not permitted to sell their holdings to a resident member of a firm in this country without specific permission. American manufacturing plants are not molested and American residents in Germany may also continue freely to dispose of their private means within the confines of the country." It is officially added that the compulsory liquidation of the administration of the property of American firms is not contemplated, as it is presumed the provisions of the Trading with the Enemy Act do not purpose the sequestration or confiscation by the American Government of German property held in the United States. A Copenhagen dispatch significantly adds that these German regulations are of such nature that they can be used as a basis for financial reprisals.

As the text of the German ordinance concerning trading with the enemy is not accessible, further details cannot be given.

From remote times, trading with the enemy has been illegal in Great Britain; the prohibition had accordingly only to be made operative by royal proclamation, which was issued on the day after the declaration of war, though subsequently modified. Penalties and details were specified in the Act of September 18. It was not until the end of November, the 27th, that the Custodian of Enemy Property was appointed by and under the regulations of the Board of Trade. To this Custodian are to be paid any dividends, interest, or share of profits belonging to an enemy, together with any money paid into a bank or held in trust, for an enemy's account, with penalty for non-compliance. Evasion of full distribution is penalized. Enemy's rents are to be lodged with the Custodian. Notification of all facts relating to the above is compulsory. The High Court or one of its judges may vest in the Custodian debts due from an enemy or damages recoverable from him, or property or property rights, real and personal, belonging to him, with power to sell and manage. The Custodian

shall hold such money and property for the duration of the war, "and shall thereafter deal with the same in such manner as His Majesty may by Order in Council direct." Enemy property in the hands of the Custodian is made liable on proper order for that enemy's debts, but with due regard to other claims upon him. No assignment of enemy property in evasion of the Act is valid.

In subsequent orders, I note as of interest that occupied territory, its residents and their property, is treated as a part of the occupant's territory, copied in the United States Act. Also that interest on public British obligations — of the government, of any of the Dominions, of municipalities or of foreign governments — due to an enemy, is payable to the Custodian. Occasional changes were made in the procedure.

Our Act was evidently patterned after the British Act, but is more of a unified system, not having thus far at least to be frequently patched up to meet developments. And our Act classes enemies and their allies together, while the British Act met the emergency of each new enemy by reenactment *ad hoc*. Germany and Austria-Hungary at the outset had no allies.

These are the more important provisions of the Trading with the Enemy Acts so far as they relate to a Custodian, or public trustee. They appear to form a reasonable and necessary piece of machinery to sequester and administer the property of every kind belonging to nonresident enemies, in a just and orderly manner during a war.

It would be valuable if a Custodian or his Assistant would give the JOURNAL an account of its actual working. If an international boycott ever becomes a real part of a public system for bringing pressure upon a recalcitrant state, this practice, or something resembling it, must be resorted to.

T. S. WOOLSEY.

THE INTERNATIONAL RELATIONS OF JAPAN, CHINA AND THE UNITED STATES

In an editorial comment in the last issue of the JOURNAL,¹ attention was called to the visit of the Japanese mission to the United States, headed by Viscount Ishii, and a part of his address, delivered at a banquet in New York on September 27, 1917, was quoted, in which the

¹ October, 1917, p. 839.

distinguished head of the mission referred to, as better than ships, men or guns, the notes exchanged between Secretary Root and Ambassador Takahira in 1908, in which the two governments expressed themselves as mutually agreed "formally to respect the territorial possessions belonging to each other in the regions of the Pacific Ocean." Thereupon Viscount Ishii stated, in behalf of the country which he represented:

Gentlemen, Japan is satisfied with this. Are you? If so, there is no Pacific Ocean question between us. We will coöperate, we will help, and we will hold, each of us, what is guaranteed under that agreement.

On this state of affairs the editorial comment indulged in that most dangerous but most attractive weakness of even well-informed persons when speaking of public affairs — a political prophecy — and the writer of the comment felt himself justified in assuring Viscount Ishii and the people of Japan, for whom he spoke, that the people of the United States would answer "yes" to his questions. But, of course, a statement of this kind could only be taken as an expression of individual good will and a hope that it was shared by the American people. The best answer would be that of the American people, and as Viscount Ishii spoke for the Japanese people, it was natural that Secretary Lansing should speak not only for the American people but for the government which they have constituted and to whose support they have pledged their lives and their sacred honor.

To this question, put on September 29, 1917, a formal answer was given on November 2, 1917, by Secretary of State Lansing on behalf of the government and people of the United States, and accepted by Viscount Ishii on behalf of the government and people of Japan, and evidenced by an exchange of notes between Secretary Lansing and Ambassador Ishii. The simplest way of making clear the intent of the two countries is to set forth the evidence of their intent, which they themselves have furnished:

EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND JAPAN, NOVEMBER 2, 1917¹

In order to silence mischievous reports that have from time to time been circulated, it is believed by us that a public announcement once more of the desires and intentions shared by our two Governments with regard to China is advisable.

The Governments of the United States and Japan recognize that territorial

¹U. S. Treaty Series, No. 630. The texts of both identic notes are printed in the SUPPLEMENT to this issue, p. 1.

propinquity creates special relations between countries, and, consequently, the Government of the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous.

The territorial sovereignty of China, nevertheless, remains unimpaired and the Government of the United States has every confidence in the repeated assurances of the Imperial Japanese Government that while geographical position gives Japan such special interests they have no desire to discriminate against the trade of other nations or to disregard the commercial rights heretofore granted by China in treaties with other Powers.

The Governments of the United States and Japan deny that they have any purpose to infringe in any way the independence or territorial integrity of China, and they declare, furthermore, that they always adhere to the principle of the so-called "Open Door" or equal opportunity for commerce and industry in China.

Moreover, they mutually declare that they are opposed to the acquisition by any Government of any special rights or privileges that would affect the independence or territorial integrity of China or that would deny to the subjects or citizens of any country the full enjoyment of equal opportunity in the commerce and industry of China.

ROBERT LANSING.

Documents of this kind must needs be interpreted, and it is a familiar maxim of the common law, and, indeed, of all law, that *contemporaneous exposition is the best*. Secretary Lansing, therefore, on behalf of the Government of the American people, gave to the public a statement defining the sense in which the terms of his note, rather of their notes, was to be understood, and in this statement the reasons for the note and their exchange are set forth. Inasmuch as Secretary Lansing's note is in the nature of an offer, and Viscount Ishii's note in the nature of an acceptance, it necessarily follows that the offer was accepted in the sense in which it was understood by Secretary Lansing; and, in order that there might be no doubt as to this sense, the interpretation, no doubt made to Viscount Ishii in person, was made in public to the people of the United States by Secretary Lansing, so that the notes and the statement constitute a single document, without which neither is to be understood or applied. For this reason, the text of Secretary Lansing's statement follows in full:¹

Viscount Ishii and the other Japanese commissioners who are now on their way back to their country have performed a service to the United States as well as to Japan which is of the highest value.

There had unquestionably been growing up between the peoples of the two countries a feeling of suspicion as to the motives inducing the activities of the other in the Far East, a feeling which, if unchecked, promised to develop a serious situation.

¹ *Official Bulletin*, November 6, 1917.

Rumors and reports of improper intentions were increasing and were more and more believed. Legitimate commercial and industrial enterprises without ulterior motive were presumed to have political significance, with the result that opposition to those enterprises was aroused in the other country.

The attitude of constraint and doubt thus created was fostered and encouraged by the campaign of falsehood, which for a long time had been adroitly and secretly carried on by Germans, whose government, as a part of its foreign policy, desired especially to so alienate this country and Japan that it would be at the chosen time no difficult task to cause a rupture of their good relations. Unfortunately there were people in both countries, many of whom were entirely honest in their beliefs, who accepted every false rumor as true, and aided the German propaganda by declaring that their own government should prepare for the conflict, which they asserted was inevitable, that the interests of the two nations in the Far East were hostile, and that every activity of the other country in the Pacific had a sinister purpose.

Fortunately this distrust was not so general in either the United States or Japan as to affect the friendly relations of the two governments, but there is no doubt that the feeling of suspicion was increasing and the untrue reports were receiving more and more credence in spite of the earnest efforts which were made on both sides of the Pacific to counteract a movement which would jeopardize the ancient friendship of the two nations.

The visit of Viscount Ishii and his colleagues has accomplished a great change of opinion in this country. By frankly denouncing the evil influences which have been at work, by openly proclaiming that the policy of Japan is not one of aggression, and by declaring that there is no intention to take advantage commercially or industrially of the special relation to China created by geographical position, the representatives of Japan have cleared the diplomatic atmosphere of the suspicions which had been so carefully spread by our enemies and by misguided or overzealous people in both countries. In a few days the propaganda of years has been undone, and both nations are now able to see how near they came to being led into the trap which had been skillfully set for them.

Throughout the conferences which have taken place Viscount Ishii has shown a sincerity and candor which dispelled every doubt as to his purpose and brought the two governments into an attitude of confidence toward each other which made it possible to discuss every question with frankness and cordiality. Approaching the subjects in such a spirit and with the mutual desire to remove every possible cause of controversy the negotiations were marked by a sincerity and good will which from the first insured their success.

The principal result of the negotiations was the mutual understanding which was reached as to the principles governing the policies of the two Governments in relation to China. This understanding is formally set forth in the notes exchanged and now made public. The statements in the notes require no explanation. They not only contain a reaffirmation of the "open door" policy, but introduce a principle of noninterference with the sovereignty and territorial integrity of China, which, generally applied, is essential to perpetual international peace, as clearly declared by President Wilson, and which is the very foundation also of Pan Americanism as interpreted by this government.

The removal of doubts and suspicions and the mutual declaration of the new doctrine as to the Far East would be enough to make the visit of the Japanese commission to the United States historic and memorable, but it accomplished a further purpose, which is of special interest to the world at this time, in expressing Japan's earnest desire to coöperate with this country in waging war against the German Government. The discussions, which covered the military, naval, and economic activities to be employed with due regard to relative resources and ability, showed the same spirit of sincerity and candor which characterized the negotiations resulting in the exchange of notes.

At the present time it is inexpedient to make public the details of those conversations, but it may be said that this government has been gratified by the assertions of Viscount Ishii and his colleagues that their government desired to do their part in the suppression of Prussian militarism and were eager to coöperate in every practical way to that end. It might be added, however, that complete and satisfactory understandings upon the matter of naval coöperation in the Pacific for the purpose of attaining the common object against Germany and her allies have been reached between the representative of the Imperial Japanese Navy, who is attached to the special mission of Japan, and the representative of the United States Navy.

It is only just to say that the success, which has attended the intercourse of the Japanese commission with American officials and with private persons as well, is due in large measure to the personality of Viscount Ishii, the head of the mission. The natural reserve and hesitation, which are not unusual in negotiations of a delicate nature, disappeared under the influence of his open friendliness, while his frankness won the confidence and good will of all. It is doubtful if a representative of a different temper could in so short a time have done as much as Viscount Ishii to place on a better and firmer basis the relations between the United States and Japan. Through him the American people have gained a new and higher conception of the reality of Japan's friendship for the United States which will be mutually beneficial in the future.

Viscount Ishii will be remembered in this country as a statesman of high attainments, as a diplomat with a true vision of international affairs, and as a genuine and outspoken friend of America.

In the address delivered by Viscount Ishii at the banquet given to him in New York on September 29, 1917, he referred to the seeds of distrust sown by an insidious hand, and in Secretary Lansing's public statement of November 2, 1917, accompanying the notes and explaining their origin and the sense in which they are to be understood, he referred in apt terms to the notes as removing the growth of discord which unfortunately had taken root. What each statesman had in mind we do not need to speculate, inasmuch as the sinister hand disclosed itself in the following note, dated Berlin, January 19, 1917, and signed by the then Imperial Secretary of State for Foreign Affairs:

On the 1st of February we intend to begin submarine warfare unrestricted. In spite of this it is our intention to endeavor to keep neutral the United States of America.

If this attempt is not successful, we propose an alliance on the following basis with Mexico: That we shall make war together and together make peace. We shall give general financial support, and it is understood that Mexico is to reconquer the lost territory in New Mexico, Texas, and Arizona. The details are left to you for settlement.

You are instructed to inform the President of Mexico of the above in the greatest confidence as soon as it is certain there will be an outbreak of war with the United States, and suggest that the President of Mexico on his own initiative should communicate with Japan suggesting adherence at once to this plan; at the same time offer to mediate between Germany and Japan.

Please call to the attention of the President of Mexico that the employment of ruthless submarine warfare now promises to compel England to make peace in a few months.¹

May we not hope that the words of Hosea, found applicable in the past, may always apply to those who would create discord and distrust between nations: "They have sown the wind, and they shall reap the whirlwind."

JAMES BROWN SCOTT.

TREATMENT OF ENEMY ALIENS

Apart from its special horrors and excesses, due mainly to the Teutonic theory and practice of warfare, the Great European War seems to mark a reversion to certain former severities which modern civilization was supposed to have outlived. While most of these reactionary tendencies or practices are wholly unjustified, others may perhaps be successfully defended on the ground of a fundamental change in the conditions of modern warfare.

Among the defensible reversions to former severities which were supposed to have been abandoned is that of the detention in concentration camps of enemy aliens of military age.

It is true that there has never been a clearly defined rule of international law governing the treatment of enemy aliens. Even in the Middle Ages alien merchants regarded as enemies were usually permitted to dispose of their property or depart with it. Sometimes a period of forty days was allowed for this purpose. As is well known, Magna Charta provided for the security both of the persons and property of

¹ *Congressional Record*, Vol. 55, No. 4, p. 194.

foreign enemy merchants. In 1666 Louis XIV issued a proclamation permitting Englishmen three months in which to leave with their property.

After a careful examination of modern practice, the writer of this editorial thus stated what he supposed was the present-day practice relating to the treatment of enemy aliens, on page 362 of his *Essentials of International Law*, published in 1912:

A considerable practice of over a century and a half has established the customary rule that nationals of the enemy State found in belligerent territory at the outbreak of war are permitted to remain during good behavior, unless their expulsion is required by military considerations. Permission to remain carries with it, of course, the right to protection of life and property and an obligation of temporary allegiance. If ordered to leave, alien enemies should be given a reasonable time for the withdrawal or disposal of their property. Nor may they any longer be detained or held as prisoners.

It was added in two footnotes:

The only instances of expulsion during recent wars with which we are familiar have been that of the Germans from Paris in 1870 — a precautionary measure which has been much criticized; the expulsion of various categories of British subjects during the Boer War; and the forcible ejection and cruel treatment of Japanese refugees in Manchuria and Siberia by the Russians during the Russo-Japanese War. In its Imperial Order of February 28, 1904, the Russian Government had authorized Japanese subjects to continue, under the protection of the Russian Law, to reside and to follow peaceful callings in the Russian Empire except in territories forming part of the Imperial Lieutenancy of the Far East. In its "Instructions" of February 10, 1904, the Japanese Government made no exceptions whatever, though it was made clear that such permission to continue residence in Japan should be considered as an act of grace and conditional upon good behavior.

The last instance of forcible detention occurred in 1803, when Napoleon I ordered the arrest of all Englishmen between eighteen and sixty years of age residing in France, as an unjustifiable reprisal for the British capture of French vessels without a prior declaration of war.

In another footnote the writer had, however, raised the question whether, in a future war on the European Continent, the practice of detention of alien enemies might not be revived. He observed:

The question has been raised whether, in view of the generality of the obligation of military service on the Continent of Europe, it would be permissible to detain alien enemies who might otherwise join the opposing belligerent army. It would be difficult to justify an obligation to permit the departure of such persons, though it appears to be tolerated on grounds of policy.

The modern practice is thus stated by a recent authority, Coleman Phillipson, in his *International Law and the Great War* (pages 83-85):

Though there is no definitive international law on the subject, it has become a modern customary rule that enemy aliens may not be arrested, nor their property confiscated, but should be allowed a reasonable time for withdrawal. No aliens of any kind, even friendly and neutral, may claim, as a right, to remain within the jurisdiction; every State, in virtue of its sovereign power, is entitled, if it sees fit, to expel *en masse* all enemy subjects, even if they are established *bona fide* and have acquired a domicile. If they are not called upon to leave, and are allowed to continue their residence, they should be treated, subject to special restrictions of the municipal law and of government orders, with moderation, if not on terms of perfect equality with subjects. So long as they remain inoffensive, carefully respect the law, and fulfill other requirements demanded by the interests of public security, they ought not to be treated as enemies or even as though they were prisoners of war. . . .

Whether an exception to the rule of free withdrawal is to be made in the case of such enemy aliens as are liable to military service is a question depending on considerations of public policy, military necessity, and reciprocal treatment by the hostile government. . . .

Immediately upon the outbreak of the present war it became evident that France and Germany at least had no intention of permitting the departure of enemy aliens of military age to swell the ranks of the opposing belligerent armies. As the war continued, an ever-increasing number of enemy civilians have been interned in these countries. In Germany we know that these have not merely been held as prisoners, but have often been treated in the most cruel and ignominious fashion. Several hundreds of thousands of civilians or noncombatants have even been deported into Germany from the occupied districts of Belgium and northern France and reduced to a condition of slavery of the most fearful sort.

"Owing to the extensive diffusion of German subjects, the existence of large numbers in this country [England], and the extraordinarily elaborate net of espionage spread everywhere by their [the German] authorities," the British Parliament, on August 5, 1914, passed a very drastic Aliens Restriction Act. "This Act empowered the King in Council to impose on aliens whatever restrictions might be deemed necessary to prohibit them from landing on our [British] shores, to provide measures for deporting alien residents in the United Kingdom, or to require such aliens as were permitted to remain and comply with

any regulations that might be made with regard to registration, place of abode, traveling, or otherwise."¹

The British Aliens Restriction Act was soon supplemented by an Aliens Restriction Order,² which prescribed more definite and detailed restrictions on the freedom of enemy aliens resident in the United Kingdom.

In the United States it is provided by Statute (sect. 4067 of the Revised Statutes):

Whenever there is declared a war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed, as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.

In pursuance of this authority vested in him by an Act of Congress, President Wilson, immediately upon our declaration of war against Germany on April 6, 1917, issued the following declaration:

All alien enemies are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof, and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States, and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the President; and so long as they shall conduct themselves in accordance with law, they shall be undisturbed in the peaceful pursuit of their lives and occupations and be accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States; and towards such alien enemies as conduct themselves in accordance with law, all citizens of the United States are enjoined to preserve the peace and to treat them with all such friendliness as may be compatible with loyalty and allegiance to the United States;

¹ The above citations are from Coleman Phillipson, *op. cit.*, pp. 85 and 86.

² For the texts of this Act and this Order, see the Appendices to Baty and Morgan, *War: Its Conduct and Legal Results*.

And all alien enemies who fail to conduct themselves as so enjoined, in addition to all other penalties prescribed by law, shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by Sections four thousand and sixty-nine and four thousand and seventy of the Revised Statutes, and as prescribed in the regulations duly promulgated by the President.

The President also declared and established the following regulations:

(1) An alien enemy shall not have in his possession, at any time or place, any firearm, weapon, or implement of war, or component part thereof, ammunition, maxim or other silencer, bomb or explosive or material used in the manufacture of explosives;

(2) An alien enemy shall not have in his possession at any time or place, or use or operate any aircraft or wireless apparatus, or any form of signaling device, or any form of cipher code, or any paper, document or book written or printed in cipher or in which there may be invisible writing;

(3) All property found in the possession of an alien enemy in violation of the foregoing regulations shall be subject to seizure by the United States;

(4) An alien enemy shall not approach or be found within one-half of a mile of any Federal or State fort, camp, arsenal, aircraft station, Government, or naval vessel, navy yard, factory, or workshop for the manufacture of munitions of war or of any products for the use of the army or navy;

(5) An alien enemy shall not write, print, or publish any attack or threats against the Government or Congress of the United States, or either branch thereof, or against the measures or policy of the United States, or against the person or property of any person in the military, naval, or civil service of the United States, or of the States or Territories, or of the District of Columbia, or of the municipal governments therein;

(6) An alien enemy shall not commit or abet any hostile act against the United States, or give information, aid, or comfort to its enemies;

(7) An alien enemy shall not reside in or continue to reside in, to remain in, or enter any locality which the President may from time to time designate by Executive Order as a prohibited area in which residence by an alien enemy shall be found by him to constitute a danger to the public peace and safety of the United States, except by permit from the President and except under such limitations or restrictions as the President may prescribe;

(8) An alien enemy whom the President shall have reasonable cause to believe to be aiding or about to aid the enemy, or to be at large to the danger of the public peace or safety of the United States, or to have violated or to be about to violate any of these regulations, shall remove to any location designated by the President by the Executive Order, and shall not remove therefrom without a permit, or shall depart from the United States if so required by the President;

(9) No alien enemy shall depart from the United States, until he shall have received such permit as the President shall prescribe, or except under order of a court, judge, or justice, under Sections 4069 and 4070 of the Revised Statutes;

(10) No alien enemy shall land in or enter the United States, except under such restrictions and at such places as the President may prescribe;

(11) If necessary to prevent violations of these regulations, all alien enemies will be obliged to register;

(12) An alien enemy whom there may be reasonable cause to believe to be aiding or about to aid the enemy, or who may be at large to the danger of the public peace or safety, or who violates or attempts to violate, or of whom there is reasonable ground to believe that he is about to violate, any regulation duly promulgated by the President, or any criminal law of the United States, or of the States or Territories thereof, will be subject to summary arrest by the United States Marshal, or his deputy, or such other officer as the President shall designate, and to confinement in such penitentiary, prison, jail, military camp, or other place of detention as may be directed by the President.

It may thus be seen that there is vested in the President and executive officers of the United States ample authority for dealing with the dangerous and pernicious activities of enemy aliens in this country to whom the law of treason and other statutes like the Espionage Act are also applicable. So long as they conduct themselves properly they are not to be disturbed in the "peaceful pursuit of their lives and occupations." They are even to be "accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and the safety of the United States." But if they do not conduct themselves in accordance with the law they are "liable to be apprehended, restrained, secured, and removed."

It is estimated that there are nearly a million German enemy aliens in this country owing a temporary allegiance to the Government of the United States. It is believed that the great majority of these are of a peaceable and law-abiding disposition. But it is to be feared that among them there are many thousands of persons who are not well disposed toward our government and people. We know that Germany has covered neutral as well as belligerent countries with a perfect network of espionage, and it is not likely that we have escaped the toils of this monstrous system. Indeed, we know that we have not escaped, for there is plenty of evidence of the secret work of German spies in the numerous strikes, many so-called peace activities, the frequent destruction of property of various kinds, the acts of arson constantly being committed, and numerous other crimes of which we read and hear daily.

It is reported that some hundreds of "German suspects" have already been interned. Their number will doubtless increase greatly as the character of their pernicious activities becomes more and more manifest. In this, as in most matters, an ounce of prevention is worth

a pound of cure, and more drastic measures than those already taken seem necessary. One preventive measure which might well be considered is the removal to a considerable distance inland, or to places remote from the coast, munition factories, large cities, etc., of all aliens who cannot be trusted.

There should be a national registry of all enemy aliens, in which their age, sex, occupation, residence, etc., should be accurately noted. Suspects should be watched, and their activities made the subject of careful reports to a central office or bureau. It might also be considered whether the naturalization papers of enemy aliens granted within recent years should not be revoked or reconsidered in the light of these reports; and also whether naturalization should in any case be granted to the subjects of a country, like Germany, which permits its citizens who acquire a foreign nationality to retain their allegiance to the German Emperor.

And we should not forget that among our naturalized citizens there are many who are American in name only; who remain alien and even enemy at heart or in real purpose. It would be well perhaps for Congress also to consider whether the writ of *habeas corpus* might not be suspended so as to enable the Federal authorities to deal with these cases. It is surely not in the interest of the public welfare that efforts to prevent and check the anti-patriotic and pro-German activities, even of American citizens, should be hampered by the ordinary processes of law which prevail in times of peace.

AMOS S. HERSHEY.

WAR AND LAW

Since the outbreak of this war the disciples of the Austinian school of jurisprudence have been inclined more than ever to deride international law. Blissfully content with their scientific prepossession that nothing is law which has not the sanction of physical force, they claim that the law of nations has proved its utter futility.

To these scoffers must be added also those who have given but little thought to the subject and who naturally ask: "What is the use of a law which cannot prevent war or regulate its methods once it has begun?" Such critics have apparently gained the impression that international law is a negligible factor in times of peace, and that its main *raison d'être* is to regulate the conduct of war. This is not at all strange when one considers the extent to which the law of war has

been stressed by publicists and — paradoxically — by the two *Peace Conferences* at The Hague in 1899 and 1907.

We ought to recognize a failure to make fundamental distinctions between the law of peace and the law of war. Where the law of peace fails to provide an adequate remedy for international wrongs, it concedes the right of nations to resort to measures of "self-help" either in the form of so-called "nonhostile redress" or of war itself. Once war has arrived, however, the maxim *inter arma silent leges* must prevail. War is the abandonment of litigation and argument. It is the negation of law. It is utterly unlike trade rivalries, a medieval tourney, or a prize-fight, — subject to regulation and control by a commission, a court, or a referee, as the case may be. On the field of battle there is no compelling voice of authority to prevent or to punish violations of the usages and rules of war. If the victor has been guilty of infractions, he suffers no penalty. If the vanquished has been guilty, his offenses are expiated incidentally in the larger penalty of defeat itself.

The usages and rules of war owe their existence in the main to the mutual convenience and needs of belligerents. It is essential in times of peace to reach agreements concerning the procedure which should be followed in battle when intercourse and negotiation are well-nigh impossible. But it still remains true that, when one of the belligerents, for reasons of his own, ignores the usages and rules of war, it is vain and unreasonable to invoke the aid of law. The true function of international law is not to regulate war, but to regulate the *peaceful* relations of states.

Such being the case, the law defining the rights and obligations of neutrals also is entitled to less homage than it has heretofore received. The experience of this war has confirmed the unpleasant lessons of other wars, that neutral interests are respected by belligerents so long as it may suit their *own* interests and convenience. When nations have staked everything on the arbitrament of the sword, the interests of neutrals must necessarily sink into relative insignificance. Moreover, as President Wilson has pointed out, "Neutrality is no longer feasible or desirable where the peace of the world is involved and the freedom of its peoples." When the peace and order of the international community is menaced by an outlaw, it is impossible for a neutral to remain indifferent: he is bound to be drawn into the struggle, either directly or indirectly. The most perfectly drawn code of neutrality can neither

avert war from neutral nations nor absolve them for their failure to do their duty as international good citizens.

Viewed in this light, the present war is in no way evidence of what some cynics have chosen to regard as the breakdown either of civilization, of Christianity, or of international law. On the contrary, the union of twenty and more nations against one outlaw nation with its dupes and accomplices is striking evidence of the vigor of law and of the respect with which it is held. We might well have despaired if Germany had been permitted to wreak her will unopposed throughout Europe and the world at large. This is truly a war in defense of law. And a law which has behind it the superb sanction of so much heroism and sacrifice is not a law to be derided or condemned.

International law, therefore, is in no sense on the defensive at this time, except as regards its German foes, who recognize no law other than that imposed by the will of Germany. Its mission to secure justice among nations thus becomes more sacred and imperative than ever. Our solemn duty is to make certain that it shall triumph without fail and be prepared effectively to fulfill its high function.

Recognizing that the true object of the law of nations is to regulate the peaceful relations of states and to provide adequate remedies for international wrongs, we are bound to seek its perfection. Wherever it has rested on false assumptions; wherever it has failed to provide clear principles and sound norms of conduct; wherever it has failed to indicate effective means of redress for wrongs, — *there* lies the true task of statesmen and publicists.

That the task is tremendous should be candidly admitted by all; but we must never fail to render to international law its rightful and generous meed of praise for actual accomplishment. We should not forget that the courts of nearly all civilized nations — even in times of war — are ever ready to interpret and to enforce the rules of international law. We must recognize, moreover, that in the normal processes of peaceful intercourse between nations, diplomacy pays profound, though unostentatious, reverence to the law of nations. We are too inclined to note only the failures of diplomacy: we fail to take account of its silent but significant triumphs. In our crude respect for the kind of law represented by the constable, we fail to remember often that the law of nations appeals to distinct, but nevertheless effective, sanctions of its own. It does not aim to resort to physical coercion: It respects too profoundly the freedom of nations — what has been well

termed their "autonomy of will" (*autonomie de la volonté*) — to invoke doubtful expedients of police enforcement. The fundamental sanction of international law must necessarily consist in what Gareis has so well characterized as the recognition of "anticipated advantages of reciprocity as well as fear of retaliation." In its appeal to the enlightened self-interest of nations in their normal peaceful relations it may well be proud of its record of achievement and fear no critics or enemy except the international outlaw that knows no law except the law of his own will.

It would seem as if at this great crisis the American Society of International Law, which has done so much to awaken interest on this Continent in the law of nations, should endeavor to reaffirm in some signal fashion universal faith in the value, the vigor, and the ultimate triumph of law throughout the world. The next annual meeting of the Society might therefore be made a special occasion to present striking evidence of its unwavering faith in the high mission and the victory of international law. As this war is essentially a war in defense of international law and order, it would seem peculiarly fitting that representatives of the nations allied in this sacred cause should be invited to participate in such a demonstration. While councils of the Allies are meeting in Europe to concert measures for the successful prosecution of the war against outlaws, let us not neglect any opportunity to meet together to concert measures for the upbuilding and the strengthening of international law in order successfully to perform its great task when the war is won. In this conspicuous way we may demonstrate to Germany that the outlaw has no standing in the community of nations; that law must reign supreme throughout the world; that our cause is sacred; and that it is identical with the cause of civilization itself.

PHILIP MARSHALL BROWN.

WAR BETWEEN AUSTRIA-HUNGARY AND THE UNITED STATES

On the evening of April 2, 1917, the President addressed the Congress of the United States, advocating the declaration of war against the Imperial German Government, and four days later the Congress declared the existence of a state of war between the United States and the Imperial German Government. The President referred to the relations existing between the United States and Austria-Hungary, and although he might have recommended a declaration of war against that Govern-

ment because of its alliance with Germany and complicity in the acts of war committed by that Imperial Government, he contented himself with the following statement of the relations between the United States, on the one hand, and the Austro-Hungarian Government, on the other:

I have said nothing of the governments allied with the Imperial Government of Germany because they have not made war upon us or challenged us to defend our right and our honor. The Austro-Hungarian Government has, indeed, avowed its unqualified indorsement and acceptance of the reckless and lawless submarine warfare adopted now without disguise by the Imperial German Government, and it has therefore not been possible for this government to receive Count Tarnowski, the ambassador recently accredited to this government by the Imperial and Royal Government of Austria-Hungary; but that government has not actually engaged in warfare against citizens of the United States on the seas, and I take the liberty, for the present at least, of postponing a discussion of our relations with the authorities at Vienna. We enter this war only where we are clearly forced into it because there are no other means of defending our rights.¹

The reply of Austria-Hungary was prompt, indicative of its feeling toward the United States, and decisive as far as it went. On April 8, 1917, Austria-Hungary broke off diplomatic relations with the United States and its people, and the Imperial and Royal Minister of Foreign Affairs handed the American chargé d'affaires at Vienna a note of which the following is the official translation:

IMPERIAL AND ROYAL MINISTRY OF THE IMPERIAL AND ROYAL HOUSE AND OF FOREIGN AFFAIRS

Vienna, April 8, 1917.

Since the United States of America has declared that a state of war exists between it and the Imperial German Government, Austria-Hungary, as ally of the German Empire, has decided to break off the diplomatic relations with the United States, and the Imperial and Royal Embassy in Washington has been instructed to inform the Department of State to that effect.

While regretting under these circumstances to see a termination of the personal relations which he has had the honor to hold with Chargé d'Affaires of the United States of America, the undersigned does not fail to place at the former's disposal herewith the passport for the departure from Austria-Hungary of himself and the other members of the Embassy.

At the same time the undersigned avails himself of the opportunity to renew to the Chargé d'Affaires the expression of his most perfect consideration.

CZERNIN.

Inasmuch as Austria remained the firm and true ally of the Imperial German Government, and neither mended its ways nor had a change

¹ *Congressional Record*, April 2, 1917.

of heart as far as its relations with the United States were concerned, the President, on December 4, 1917, before the Congress of the United States, discussed the relations of the United States with the authorities at Vienna, which he had postponed on the occasion of his address April 2d, recommending the declaration of a state of war against the Imperial German Government. And after stating that "we must clear away with a thorough hand all impediments to success," thus spoke of Austria-Hungary and of our Imperial German antagonist:

I therefore very earnestly recommend that the Congress immediately declare the United States in a state of war with Austria-Hungary. Does it seem strange to you that this should be the conclusion of the argument I have just addressed to you? It is not. It is in fact the inevitable logic of what I have said. Austria-Hungary is for the time being not her own mistress but simply the vassal of the German Government. We must face the facts as they are and act upon them without sentiment in this stern business. The Government of Austria-Hungary is not acting upon its own initiative or in response to the wishes and feelings of its own peoples, but as the instrument of another nation. We must meet its force with our own and regard the Central Powers as but one. The war can be successfully conducted in no other way. The same logic would lead also to a declaration of war against Turkey and Bulgaria. They also are the tools of Germany. But they are mere tools and do not yet stand in the direct path of our necessary action. We shall go wherever the necessities of this war carry us, but it seems to me that we should go only where immediate and practical considerations lead us and not heed any others.¹

As a consequence of this very earnest recommendation of the President, the Congress adopted the following joint resolution, approved by the President December 7, 1917:²

Whereas the Imperial and Royal Austro-Hungarian Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a state of war is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government; and that the President be, and he is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

Approved, December 7, 1917.

What are these repeated acts of war against the government and the people of the United States of America? We are not left to conjecture what they were or are and to prepare for ourselves imperfect

¹ *Congressional Record*, December 4, 1917.

² Pub. Res. No. 17, 65th Congress.

lists of acts which, in our opinion, would justify the state of war which the Congress declared, inasmuch as the Committee on Foreign Affairs of the House of Representatives enumerated and classified the most flagrant of them, in the report presented to the House with the text of the proposed declaration of war, and justifying its adoption, and by this report, the material portion whereof follows,¹ the Congress and the American people must be judged:

The President has asked for the declaration that a state of war exists against Austria-Hungary.

In his address, delivered at the joint session of the two Houses of Congress on December 4, he uses this language:

One very embarrassing obstacle that stands in our way is that we are at war with Germany, but not with her allies. I therefore very earnestly recommend that the Congress immediately declare the United States in a state of war with Austria-Hungary.

The accompanying resolution carries out this recommendation of the President.

The enactment of this declaration involved very little readjustment of the affairs between the United States and Austria-Hungary, because a state of war which this declaration declares to exist actually has been a fact for many months. The depredations on American lives and rights by Austrian naval forces has been small compared with that of Germany, but they have been indulged in to an extent to constitute war upon this country, and this fact, taken in connection with other acts of Austria-Hungary, has more and more brought that government into a position where the American people have realized that she must be included with Germany as an enemy.

In September, 1915, it was discovered that Ambassador Dumba and Austrian consuls in St. Louis and elsewhere were implicated in instigating strikes in American manufacturing plants engaged in the production of munitions of war. An American citizen named Archibald, traveling under an American passport, had been intrusted with dispatches in regard to this matter from Dumba and Bernstorff to their governments. These acts were admitted by Dumba. By reason of the admitted purpose and intent of Dumba to conspire to cripple business industries in the United States, and by reason of the flagrant violation of diplomatic propriety in employing an American citizen protected by an American passport as a secret bearer of official dispatches through the lines of an enemy of Austria-Hungary, the Austro-Hungarian Government was requested to recall Dumba.

The Austrian consuls at St. Louis and New York were implicated with Dumba in these transactions, particularly in the circulation of strike propaganda. They were implicated in procuring forged passports from the United States for the use of their countrymen in going home.

Long before the above activities were made public, our government had evidence that the Austrian diplomatic and consular service was being used in this country for Germany's warlike purposes.

¹ House Report No. 203, 65th Cong., 2d sess.

While Austria's submarine warfare has been of a very limited character, they have adopted and adhered to the policy of the ruthless submarine warfare of the Imperial German Government.

After diplomatic relations with Germany had been broken, the department on February 14, 1917, dispatched the following telegram to the American Embassy at Vienna, surveying briefly the position of the Austrian Government on submarine warfare:

In the American note of December 6, 1915, to the Austro-Hungarian Government in the *Ancona* case, this government called attention to the views of the Government of the United States on the operations of submarines in naval warfare which had been expressed in no uncertain terms to the ally of Austria-Hungary, and of which full knowledge on the part of the Austro-Hungarian Government was presumed. In its reply of December 15, 1915, the Imperial and Royal Government stated that it was not possessed with authentic knowledge of all of the pertinent correspondence of the United States, nor was it of the opinion that such knowledge would be sufficient to cover the *Ancona* case, which was of essentially a different character from those under discussion with the Berlin Government. Nevertheless, in reply to the American note of December 19, 1915, the Austro-Hungarian Government, in its note of December 29, stated:

"As concerns the principle expressed in the very esteemed note that hostile private ships, in so far as they do not flee or offer resistance, may not be destroyed without the persons on board having been placed in safety, the Imperial and Royal Government is able substantially to assent to this view of the Washington Cabinet."

Moreover, in the case of the *Persia*, the Austro-Hungarian Government, in January, 1916, stated in effect that while it had received no information with regard to the sinking of the *Persia*, yet, in case its responsibility were involved, the Government would be guided by the principles agreed to in the *Ancona* case.

Within one month thereafter, the Imperial and Royal Government, coincidentally with the German declaration of February 10, 1916, on the treatment of armed merchantmen announced that "All merchant vessels armed with cannon for whatever purpose, by this very fact lose the character of peaceable vessels," and that, "Under these conditions orders have been given to Austro-Hungarian naval forces to treat such ships as belligerent vessels."

In accordance with this declaration several vessels with Americans on board have been sunk in the Mediterranean, presumably by Austrian submarines, some of which were torpedoed without warning by submarines flying the Austrian flag, as in the cases of the British steamers *Secondo* and *Welsh Prince*. Inquiries made through the American Ambassador at Vienna as to these cases have so far elicited no information and no reply.

Again, on January 31, 1917, coincidentally with the German declaration of submarine danger zones in waters washing the coasts of the Entente countries, the Imperial and Royal Government announced to the United States Government that Austria-Hungary and its allies would from February 1 "prevent by every means any navigation whatsoever within a definite closed area."

From the foregoing it seems fair to conclude that the pledge given in the *Ancona* case and confirmed in the *Persia* case is essentially the same as that given in the note of the Imperial German Government dated May 4, 1916, viz., "In accordance with the general principles of visit and search and destruction of merchant vessels recognized by international law, such vessels, both within and without the area declared as a naval war zone, shall not be sunk without warning and without saving human lives, unless these ships attempt to escape or offer resistance," and that this pledge has been modified to a greater

or less extent by the declarations of the Imperial and Royal Government of February 10, 1916, and January 31, 1917. In view, therefore, of the uncertainty as to the interpretation to be placed upon those declarations, and particularly this latter declaration, it is important that the United States Government be advised definitely and clearly of the attitude of the Imperial and Royal Government in regard to the prosecution of submarine warfare in these circumstances.

Please bring this matter orally to the attention of the Austrian Government and request to be advised as to whether the pledge given in the *Ancona* and *Persia* cases is to be interpreted as modified or withdrawn by the declarations of February 10, 1916, and January 31, 1917. If after your conversation it seems advisable, you may hand to the Minister for Foreign Affairs a paraphrase of this instruction, leaving the quoted texts verbatim.

In reply, the Austrian Government, in an aide memoire of March 2, 1917, after reviewing the illegal blockade measures of the allies, stated that "it now as heretofore firmly adheres to the assurances given by it" in the *Ancona* case.

The Austro-Hungarian Government also stated that Austro-Hungarian submarines had taken no part in the sinking of the British steamers *Secondo* and *Welsh Prince*, and that "the assurance which it gave the Washington Cabinet in the *Ancona* case, and renewed in the *Persia* case, has neither been withdrawn or restricted by its declarations of February 10, 1916, and January 31, 1917."

The Austro-Hungarian note endeavors, through a legal argument, to show consistency between these assurances and its declarations. In this way the Austro-Hungarian Government evades a direct answer to the American inquiry, but in its argument it substantially adheres to the declaration of January 31, 1917, for it states that —

The entire declaration is essentially nothing else than a warning to the effect that no merchant ship may navigate the sea zones accurately defined in the declaration.

and that

The Imperial and Royal Government is, however, unable to accept a responsibility for the loss of human lives which, nevertheless, may result from the destruction of armed ships or ships encountered in the closed zones.

In view of this acceptance and avowal by the Austrian Government of the policy which had led to a breach of relations between the United States and Germany, the Government of the United States found it impossible to receive Dumba's successor, Count Tarnowski. The government felt that it could not receive a new ambassador from a country which joined Germany in her submarine policy, even though its participation might be by verbal and not physical coöperation. This was communicated to the Austrian Government in a telegram from the Department dated March 28, 1917.

In his message to Congress of April 2, 1917, the President said, in respect to the attitude of Austria-Hungary:

[Here follows the quotation from President Wilson, printed *supra*, p. 166.]

The Austrian note of January 31, 1917, proclaimed the same submarine policy as that of Germany, and officially announced her intention, if she saw fit, to pursue the same ruthless submarine policy that Germany had inaugurated.

Many vessels have been sunk by submarines in the Mediterranean — the area in which Austrian submarines operate — by submarines which carried no flag or mark and the nationality of which was unknown. A great many of these undersea craft are believed to have been Austrian submarines or submarines commanded by Austrian officers, or supplied from Austrian bases or by Austrian means.

On April 4, 1917, the American four-masted schooner *Marguerite* was sunk by submarine 35 miles from the coast of Sardinia, while en route to Spain. The submarine carried no flag or marks to indicate its nationality. It is known, however, that Austrian was the language spoken by the officer of the submarine who came aboard the vessel with the boarding party, and it is believed that the submarine was Austrian.

On November 21, 1917, the *Schuykill* was sunk off the coast of Algeria by an Austrian submarine; thus Austria is making, whenever opportunity affords, the same ruthless submarine warfare that Germany is making, in disregard of the promises made this government, in violation of the law of nations and the instincts of humanity, and is as much at war with this country as Germany was after her note of January 31, 1917, and the subsequent sinking of American ships and the drowning of American citizens.

Before war was declared to exist between the United States and the Imperial German Government, it was intimated to the United States Government that if war should be declared by the United States upon Germany, Austria-Hungary would be under obligation to break off diplomatic relations with the United States. Consequently after the declaration of war of April 6, 1917, the Austro-Hungarian Government informed the American chargé at Vienna on April 8 that diplomatic relations between the United States and Austria-Hungary were broken and handed him passports for himself and members of the embassy. The following is a translation of the note handed to the American chargé by the Austrian minister for foreign affairs:

[Here follows the text of the note quoted *supra*, p. 166.]

Until the present Austro-German drive in northern Italy, the Austrian forces were gradually being driven back by the forces of the Italian armies. With the assistance of German troops drawn from the Russian front, a very serious catastrophe was inflicted upon the Italian arms, which if it had not been stemmed might have resulted in the total collapse of Italy. Such a result would have been a great blow to those with whom we are associated in this war, and as much to the United States as to any of her cobelligerents.

As a result of this situation the Allies have rushed aid to Italy, and the United States is sending ships, money, and supplies, and will probably soon send troops, who will be facing and making war on Austrian soldiers, and before this takes place there should be a declaration of war, this country against Austria-Hungary.

The Italian situation is of the utmost importance in the present conduct of the war. A declaration of war by the United States against Austria-Hungary will hearten the people of Italy, who have been misled by the mischievous and deluding propaganda engineered by the Germans. It will strengthen from a military point of view the whole allied cause. These are strong reasons for a declaration of war against Austria-Hungary.

These considerations, and the fact that Austria-Hungary is adhering to the illegal and inhumane policy of ruthless submarine warfare, and is, as the committee believes, making war upon American vessels and American citizens upon the high seas, and other reasons which are not deemed necessary to recapitulate here, induced the committee to report unanimously the accompanying resolution declaring that a state of war exists between the Imperial and Royal Austro-Hungarian Government and the government and people of the United States and making provision to prosecute the same.

The action of the committee was unanimous, and it trusts that the resolution will be adopted unanimously by the House.

In a letter to Lafayette, his comrade in arms in the cause of political liberty, Washington thus wrote of a world in ferment then, and in terms applicable to this world again unfortunately at war:

There seems to be a great deal of bloody work cut out for this summer in the north of Europe. If war, want and plague are to desolate those huge armies that are assembled, who that has the feelings of a man can refrain from shedding a tear over the miserable victims of regal ambition? It is really a strange thing that there should not be room enough in the world for men to live without cutting one another's throats.¹

JAMES BROWN SCOTT.

FOREIGN ENLISTMENTS IN THE UNITED STATES

President Washington found himself confronted with a great European War, in which the principal belligerents — Great Britain, on the one hand, and France, on the other — seemed equally desirous to force the United States to take a part. The President believed, however, that the safety of the young republic, perhaps its existence, depended upon keeping the country from taking part in a European quarrel in which the United States had, for the most part, but a sentimental interest. He issued a proclamation of neutrality, he caused the neutrality law of June 5, 1794, to be enacted, and by so doing he not only saved the country, for whose independence he was largely responsible, but at the same time laid broad and deep the foundations of neutrality. He was particularly annoyed by the actions of the French Minister, the notorious Citizen G  n  t, who claimed the right to fit out and to equip privateers in American waters, to make of American ports bases of operations, and, in prize courts instituted by himself, to pass upon the legality of captures made by the privateers which he had himself fitted out. Then, again, the sovereignty of the United States was violated

¹ Sparks, Writings of George Washington, Vol. IX, p. 380.

by persons being enlisted and induced to enlist for foreign service. This latter point was covered in Section 2 of the Act of 1794,¹ which was carried over in substance as Section 2 of the more elaborate Act of April 20, 1818, and formed Section 5282 of the Revised Statutes of 1878 and Section 10 of the Penal Code of March 4, 1909, in which codification it is thus worded:

Whoever, within the territory or jurisdiction of the United States, enlists, or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be fined not more than one thousand dollars and imprisoned not more than three years.²

A provision, consciously introduced and thus consciously retained in legislation extending over a century, is not in need of a defense, but if so it is to be found in the elaborate opinion of Attorney General Caleb Cushing, entitled *Foreign Enlistments in the United States*,—dated August 9, 1855, to be found in Opinions of Attorneys General, Volume VII, pages 367–390.

The enlistment of troops is a sovereign act. The enlistment of troops by one sovereign in the territory of another is the exercise of a sovereign power within a foreign country and can only be done with the consent of the sovereign. If done in time of war, it is in violation of the neutrality of the country permitting it and it is none the less in violation of neutrality if all the belligerents, no matter how many, should be allowed to do so, inasmuch as neutrality consists not merely in equality but in abstinence.

Such was the law, such the policy, such the practice of the United States until April 6, 1917, when the Congress, upon the recommendation of the President, declared a state of war to exist between the United States of America and the Imperial German Government. The situation was complicated. The United States was at war and so were many other countries at war with Germany, and there were large numbers of citizens or subjects of the enemies of Germany living in the United States, who could, in the opinion of their countries, be more profitably employed on the firing line. They therefore asked to enlist their subjects or citizens. This could properly be done, as the United States was no longer neutral, although it was not then an ally of those

¹ Stat. L., 381.

² 35 Stat. L., 1089.

countries in the sense in which that term would be understood. It was doubtful whether permission could properly be given by the President to representatives of the allied countries to enlist their subjects or citizens in the United States. In any event, it was better to regularize the action, if it were to be done, by the permission of the law-making power which had originally denied the permission. Therefore, the following proviso was added by Congress, and approved by the President on May 7, 1917, to Section 10, Chapter 2 of the Penal Code of 1909, above quoted:

"Provided, That this section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this proviso shall be under regulations prescribed by the Secretary of War."

JAMES BROWN SCOTT.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: *Ann. sc. pol.*, Annales des sciences politiques, Paris; *Arch. dipl.*, Archives Diplomatiques, Paris; *B.*, boletin, bulletin, bolletino; *P. A. U.*, bulletin of the Pan-American Union, Washington; *Cd.*, Great Britain, Parliamentary Papers; *Clunet*, J. de Dr. Int. Privé, Paris; *Current History* — Current History — A Monthly Magazine of the New York Times; *Doc. dipl.*, France, Documents diplomatiques; *B. Rel. Ext.*, Boletín de Relaciones Exteriores; *Dr.*, droit, diritto, derecho; *D. O.*, Diario Oficial; *For. rel.*, Foreign Relations of the United States; *Ga.*, gazette, gaceta, gazzetta; *Int.*, international, internacional, internazionale; *J.*, journal; *J. O.*, Journal Officiel, Paris; *L.*, Law; *M.*, Magazine; *Mém. dipl.*, Mémoires diplomatiques, Paris; *Monit.*, Belgium, Moniteur belge; *Martens*, Nouveau recueil général de traités, Leipzig; *Official Bulletin*, Official Bulletin of the United States; *Q.*, Quarterly; *Q. dip.*, Questions diplomatiques et coloniales; *R.*, review, revista, rivista; *Reichs G.*, Reichs-Gesetzblatt, Berlin; *Staats.*, Staatsblad, Netherlands; *State Papers*, British and Foreign State Papers, London; *Stat. at L.*, United States Statutes at Large; *Times*, The Times (London).

April, 1915.

- 26 ITALY — FRANCE — GREAT BRITAIN — RUSSIA. Secret treaty signed relative to the entrance of Italy into the war. Text made public by the Bolshevist Government of Russia. Summary of text: *Current History*, 7 (pt. 2): 13; *Independent*, 93: 53.

July, 1916.

- 3 JAPAN — RUSSIA. Treaty signed providing for joint action to prevent any third Power from gaining political dominance in China. Text made public by the Bolshevist Government of Russia. Summary: *Washington Star*, Dec. 21, 1917.

August, 1916.

- 23 ROUMANIA — FRANCE — GREAT BRITAIN — RUSSIA. Treaty signed relative to the entrance of Roumania into the war. Text made public by the Bolshevist Government of Russia. Summary: *Independent*, 93: 54.

February, 1917.

- 9 ROUMANIA — GERMANY. The United States made public a dispatch from the American chargé in Bucarest giving documents disclosing the discovery of explosives and disease germs buried in the garden of the German Legation in Bucarest. Text: *Official Bulletin*, Sept. 29, 1917.

April, 1917.

- 19 NETHERLANDS. Neutrality proclamation issued in the war between the United States and Germany. *Nederlandische Staatscourant*, 1917, No. 91.

May, 1917.

- 16 BRAZIL — FRANCE. French decree issued approving the literary and artistic property convention signed Dec. 15, 1913. *J. O.*, 1917:4053.
- 30 FRANCE — ITALY. Commercial agreement signed. French text: *J. O.*, 1917:7099.

June, 1917.

- 19-26 GREAT BRITAIN — LIBERIA. Agreement signed respecting boundary between Sierra Leone and Liberia. *G. B. Treaty Series*, No. 9, 1917.

July, 1917.

- 2 GREECE (Government of Alexander) — GERMANY AND BULGARIA. Greece declared war on Germany and Bulgaria. Diplomatic relations had been broken with the Central Powers on June 29, 1917. *Official Bulletin*, Dec. 11, 1917.
- 4 NICARAGUA — GREAT BRITAIN. Ratifications exchanged of a treaty for the regulation of the turtle-fishing industries in the territorial waters of Nicaragua as regards fishing vessels belonging to the Cayman Islanders. Signed May 6, 1916. *G. B. Treaty Series*, No. 8, 1917.
- 11 FRANCE. Amendment to the contraband list modifying the lists of Oct. 14, 1915, Jan. 27, April 13, June 28, Oct. 13, Nov. 23, 1916 and Jan. 3, 1917. *J. O.*, 1917:5307.
- 20 SIAM. Prize Court established in Siam. This law was brought into effect by royal proclamation July 22, 1917. English text: *London Gazette*, No. 30291.

August, 1917.

- 5 ARGENTINE REPUBLIC — SWEDEN. Count Luxburg, German chargé in Buenos Aires, sent messages to German Government through the Swedish Legation, with information as to the sailing of Argentine vessels, asking that they be either spared or sunk without trace. Text: *Official Bulletin*, Oct. 31, 1917.
- 13 FRANCE — ITALY. Exchange of notes relative to jurisdiction of military tribunals. Text: *J. O.*, 1917:6915.
- 24 FRANCE — GREAT BRITAIN. Agreement relative to commerce, finance, and industry. Text: *J. O.*, 1917:6980.
- 29 CHINA — ITALY. Italian Minister to Peking asked transfer of Austrian concession of Tientsin to Italy and the employment of Italians instead of Germans in the salt mines. *N. Y. Times*, Sept. 3, 1917.
- 30 GERMANY. Dr. von Bethmann-Hollweg replied to the revelations of the American Ambassador, James Gerard. *N. Y. Times*, Sept. 1, 1917.

September, 1917.

- 1 GERMANY. Mr. Gerard, American Ambassador to Germany, replied to the statement of Dr. von Bethmann-Hollweg. *N. Y. Times*, Sept. 2, 1917.
- 1 POLAND. Announced that the first step in self-government had been taken. From Sept. 1 justice will be administered in the name of the Polish Crown and by Polish judges. *N. Y. Times*, Sept. 2, 1917.
- 3 CHINA. China declined the Allies' offer to purchase or charter seized German ships. The ships are being turned over to a Chinese syndicate for the ostensible purpose of augmenting China's merchant marine. *N. Y. Times*, Sept. 7, 1917.
- 4 GERMANY — UNITED STATES. Stated authoritatively that the United States Government had never declared that the Hohenzollern dynasty and monarchical government in Germany must be abolished. *N. Y. Times*, Sept. 5, 1917.
- 6 FRANCE. Premier Ribot made statement as to Alsace-Lorraine. *N. Y. Times*, Sept. 7, 1917.
- 6 POLAND. Announced that Germany and Austria would not continue the Polish Kingdom. *N. Y. Times*, Sept. 7, 1917.
- 8 GREAT BRITAIN — VATICAN. Great Britain informed the Pope

September, 1917.

that President Wilson's reply to his peace note was in effect the reply of Great Britain. *N. Y. Times*, Sept. 9, 1917.

- 8 GERMANY. The *Rhenish Westphalian Gazette* announced that in 1904-5 the Kaiser attempted to form a Great Continental League with the object of isolating England. *N. Y. Times*, Sept. 9, 1917.
- 10 FRANCE. M. Paul Painlevé succeeded M. Ribot as Premier. *N. Y. Times*, Sept. 11, 1917.
- 11 GERMANY—HOLLAND. Germany stopped the export of coal to Holland to force Holland to float a German loan. *N. Y. Times*, Sept. 12, 1917.
- 12 ARGENTINE REPUBLIC—GERMANY. Argentine Republic handed passports to the German chargé, Count Luxburg, and recalled the Argentine naval attaché at Berlin. *La Prensa* (Buenos Aires), Sept. 13, 14, 1917; *N. Y. Times*, Sept. 13, 14, 1917.
- 12 (14) RUSSIA. A Republic of Russia proclaimed. *London Times*, Sept. 13, 1917. *Current History*, 7 (pt. 1): 29.
- 12 POLAND. Decree published at Lubin and Warsaw transferring the supreme authority to a regency council appointed by Germany and Austria. *Current History*, 7 (pt. 1): 29.
- 13 GREAT BRITAIN. Admiralty notice No. 929 of 1917, relative to the North Sea, issued. *London Gazette*, No. 30282.
- 18 SALVADOR—UNITED STATES. Announced that Salvador had ratified postal treaty with United States. *Official Bulletin*, Sept. 18, 1917.
- 21 GREECE—UNITED STATES. Greek Minister presented his credentials. *Official Bulletin*, Sept. 25, 1917.
- 21 GERMANY—VATICAN. Germany replied to the peace note of Pope Benedict. Text: *London Times* (Weekly ed.), Sept. 28, 1917; *N. Y. Times*, Sept. 22, 1917.
- 21 GERMANY—UNITED STATES. The Department of State made public a dispatch from Count von Bernstorff to his government asking credit to pay for influence in Congress through organizations to prevent the war. *N. Y. Times*, Sept. 22, 1917; *Official Bulletin*, Sept. 21, 1917.
- 21 AUSTRIA—VATICAN. Text of Austria's reply to the peace note of Pope Benedict made public. Spanish text: *La Prensa* (Buenos Aires), Sept. 23, 1917; English text: *N. Y. Times*, Sept. 22, 1917.

September, 1917.

- 21 COSTA RICA — GERMANY. Costa Rica broke off diplomatic relations with Germany. *Official Bulletin*, Dec. 11, 1917.
- 22 ARGENTINE REPUBLIC — GERMANY. Argentine Republic sent ultimatum to Germany demanding explanation of Luxburg affair. The Senate voted to break off diplomatic relations with Germany on September 19, and the Chamber of Deputies on September 22, 1917. *La Prensa* (Buenos Aires), Sept. 20, 23, 1917.
- 26 PERU — GERMANY. Peru sent ultimatum to Germany, demanding satisfaction for the sinking of Peruvian ships and guaranty as to the future. *N. Y. Times*, Sept. 27, 1917.
- 26 GERMANY — VATICAN. Germany is reported to have sent a supplemental note to the Vatican offering to give up Belgium on certain conditions. Communication of von Kuhlmann to the Papal Nuncio at Berlin. *N. Y. Times*, Sept. 27, 1917.
- 27 SWEDEN — GERMANY. Sweden protested to Germany in the Luxburg affair. *London Times* (Weekly ed.), Sept. 28, 1917.
- 28 RUSSIA. Russian Democratic Congress opened. *N. Y. Times*, Sept. 29, 1917.

October, 1917.

- 2 GREAT BRITAIN. Proclamation forbidding exports to Sweden, Norway, Denmark and Netherlands. *London Gazette*, Oct. 2, 1917.
- 5 BRAZIL — FRANCE. French decree promulgated putting into effect the Literary and Artistic Property Convention signed at Rio de Janeiro Dec. 15, 1913, ratifications of which were exchanged Sept. 11, 1917. French text: *J. O.*, 1917:8104.
- 6 UNITED STATES — GERMANY. The Department of State made public telegrams bearing upon the case of Bolo Pasha. Text: *Official Bulletin*, Oct. 6, 1917.
- 6 PERU — GERMANY. Peru broke off diplomatic relations with Germany. *Official Bulletin*, Dec. 11, 1917.
- 7 URUGUAY — GERMANY. Uruguay broke off diplomatic relations with Germany. *Official Bulletin*, Dec. 11, 1917.
- 7 GERMANY. The *Reichs-Anzeiger* announced order for registering of American property in Germany. Summary: *N. Y. Times*, Nov. 22, 1917.

October, 1917.

- 10 GERMANY — UNITED STATES. The Department of State made public two telegrams from the German Foreign Office to the Imperial German Embassy in Washington relative to sabotage in the United States. Text: *Official Bulletin*, Oct. 10, 1917.
- 11 PERU — UNITED STATES. Peru sent note to the United States giving reasons for breaking off diplomatic relations with Germany. Text with reply of United States: *Official Bulletin*, Oct. 12, 1917; *London Times* (Weekly ed.), Oct. 19, 1917.
- 14 UNITED STATES. Executive order issued putting into effect the Trading with the Enemy Act approved June 15, 1917. *Official Bulletin*, Oct. 15, 1917.
- 15 URUGUAY. Uruguay revoked by Executive Order the neutrality proclamation in force between Uruguay and France, England, Belgium, Italy, Portugal, Russia, Japan, Serbia, Roumania and Montenegro. *Official Bulletin*, Oct. 18, 1917.
- 15 UNITED STATES — URUGUAY. The United States acknowledged the note of Uruguay announcing the breaking off of diplomatic relations with Germany. Text: *Official Bulletin*, Oct. 15, 1917.
- 15 FRANCE — PORTUGAL. Agreement signed relative to military penal jurisdiction. Text: *J. O.*, 1917: 8141.
- 20 COLOMBIA — GERMANY. The Senate of Colombia adopted a resolution protesting against German submarine warfare. *N. Y. Times*, Oct. 21, 1917.
- 21 RUSSIA. Russian peace program proposed by the Council of Workmen and Soldiers Delegates in the form of instructions to the delegates to the Paris conference. Text: *N. Y. Times*, Oct. 22, 1917.
- 22 FRANCE. The French Cabinet resigned. The President refused to accept the resignations, and the Cabinet, with the exception of the Minister for Foreign Affairs, M. Ribot, remained in office. J. Louis Barthou, Minister of State, was made Minister for Foreign Affairs. *N. Y. Times*, Oct. 23, 25, 1917.
- 24 GREAT BRITAIN — SWEDEN. Great Britain restored to Sweden the bags of mail seized at Halifax. *N. Y. Times*, Oct. 25, 1917.
- 26 ITALY. The Italian Cabinet resigned. *N. Y. Times*, Oct. 27, 1917. Baron Sonnino became Minister for foreign affairs. Personnel of Cabinet. *London Times* (Weekly ed.), Nov. 2, 1917.
- 26 GERMANY — NETHERLANDS. The *Norddeutsche Allgemeine Zeitung* announced that an agreement had been concluded between

October, 1917.

Germany and the Netherlands by which the Netherlands will get German and Belgian coal, iron, and steel, while Germany will get certain Dutch foodstuffs, chiefly butter and cheese. The agreement is to run six months. *N. Y. Times*, Oct. 27, 1917.

- 26 BRAZIL — GERMANY. The Senate of Brazil declared a state of war to exist with Germany. The resolution had been previously approved by the Chambers. *Official Bulletin*, Oct. 29, Dec. 11, 1917.
- 30 GERMANY. Count Georg F. von Hertling, Prime Minister of Bavaria, was appointed Imperial German Chancellor in place of Dr. Michaelis, who became Prime Minister of Prussia. *N. Y. Times*, Oct. 31, 1917.
- 31 ARGENTINE REPUBLIC — GERMANY. The United States Department of State made public telegrams from Count Luxburg, German Minister, to his government, sent through the Swedish Legation and Foreign Office, relative to the sinking of Argentine ships. *Official Bulletin*, Oct. 31, Nov. 6, 1917.

November, 1917.

- 1 NORWAY — GERMANY. Norway protested to Germany against sinking of Norwegian ships. Text: *N. Y. Times*, Nov. 2, 1917.
- 2 JAPAN — UNITED STATES. Exchange of notes relating to the special rights of Japan in China and reaffirming the "open-door" policy. Text: *Official Bulletin*, Nov. 6, 1917.
- 7 RUSSIA. The Bolshevik Party took over the government in Russia. On Nov. 10, Nicolas Lenine became Premier and Léon Trotsky, Minister for Foreign Affairs. *Current History*, 7 (pt. 1): 418.
- 9 FRANCE. Decree promulgated incorporating into the French army resident nationals of the allied countries who are under military obligations to their country. *J. O.*, Nov. 10, 1917.
- 12 CHINA. The Chinese Government made a declaration relative to the notes exchanged Nov. 2, 1917, between Japan and the United States. *Official Bulletin*, Nov. 14, 1917.
- 14 ALLIED WAR COUNCIL. Text of agreement between Great Britain, France and Italy relative to Interallied War Council read in the House of Commons by Premier Lloyd George. *N. Y. Times*, Nov. 15, 1917.

November, 1917.

- 15 FRANCE. Georges Clémenceau became Premier. *N. Y. Times*, Nov. 16, 1917.
- 15 Death of John Watson Foster, a Vice-President and Member of the Executive Committee of the American Society of International Law, and former Secretary of State and Minister to Mexico, China and Russia. See this JOURNAL, p. 127.
- 20 RUSSIA. The Ukranian Rada proclaimed a separate state, to be a part of the Federal Republic of Russia. *Current History*, 7 (pt. 2): 28.
- 21 RUSSIA — GERMANY. The Bolshevik Government sent notes to the Allied Embassies in Petrograd announcing the proposal of an armistice. Text: *N. Y. Times*, Nov. 24, 26, 1917.
- 22 GERMANY. Admiralty notice establishing a barred zone around the Azores. *Current History*, 7 (pt. 2): 28.
- 23 BELGIUM. Belgium protested against the bombing of hospitals by the Germans. *Official Bulletin*, Nov. 23, 1917.
- 24 RUSSIA. Alexander Kerensky resigned as Premier of the Provisional Government. *Current History*, 7 (pt. 2): 30.
- 28 UNITED STATES. Proclamation issued prohibiting importation of certain commodities into the United States except under license. *Official Bulletin*, Nov. 30, 1917.
- 29 SCANDINAVIA. The monarchs of Norway, Sweden and Denmark announced after a conference that their neutrality would be maintained. *N. Y. Times*, Nov. 30, 1917.
- 29-December 3. EUROPEAN WAR. Interallied Council sat at Versailles. List of members: *Current History*, 7 (pt. 2): 31.

December, 1917.

- 1 RUSSIA — GERMANY. The Bolshevik Government sent representatives through the German lines to begin peace parley with Germany. *Current History*, 7 (pt. 2): 8.
- 3 SWITZERLAND — UNITED STATES. Announced that the United States had presented a memorandum to the Swiss Government assuring that government that its neutrality would be respected. Text: *Official Bulletin*, Dec. 11, 1917.
- 4 RUSSIA. The Provinces of Kuban and Siberia reported to have established separate governments. *Current History*, 7 (pt. 2): 30.

December, 1917.

- 5 BRAZIL — FRANCE. Brazilian decree authorizing the leasing to France of thirty German ships. *Washington Star*, Dec. 5, 1917.
- 7 FINLAND. Finland proclaimed her independence of Russia. *Current History*, 7 (pt. 2): 30.
- 7 UNITED STATES — AUSTRIA-HUNGARY. The United States declared war against Austria. *Official Bulletin*, Dec. 8, 1917; *Public Resolution No. 17, 65th Cong., 2d. sess.*
- 8 ECUADOR — GERMANY. Ecuador broke off diplomatic relations with Germany. *N. Y. Times*, Dec. 9, 1917.
- 10 PANAMA — AUSTRIA-HUNGARY. Panama declared war against Austria. *Official Bulletin*, Dec. 19, 1917.
- 10 RUMANIA — GERMANY. Armistice with Germany and Allies signed. *Current History*, 7 (pt. 2): 30.
- 10 JERUSALEM. Surrendered to British forces. Proclamation of military law. Text: *London Times* (Weekly ed.), Dec. 21, 1917.
- 12 SWITZERLAND — UNITED STATES. Switzerland answered the memorandum of the United States dated Dec. 3, 1917, relative to the neutrality of Switzerland. Text: *Official Bulletin*, Dec. 17, 1917.
- 15 RUSSIA — GERMANY AND CENTRAL POWERS. Formal armistice agreement signed at Brest-Litovsk to continue till Jan. 14, 1918. Text: *Current History*, 7 (pt. 2): 11.
- 16 CUBA — AUSTRIA-HUNGARY. Cuba declared war against Austria-Hungary. The following lists show the nations now at war and the nations which have severed diplomatic relations with each other:

1. LIST OF NATIONS AT WAR¹

1914					
July	28	Austria	vs.	Serbia	
August	1	Germany	vs.	Russia	
August	3	Germany	vs.	France	
August	3	France	vs.	Germany	
August	4	Germany	vs.	Belgium	

¹ These lists are, with the following exceptions, identical with those published on December 11, 1917, in the *Official Bulletin* issued by the Committee on Public Information: The declaration of Serbia against Germany appears to have been made August 6, instead of August 9, 1914, that of Japan against Germany appears to have been made August 23, 1914, instead of August 23, 1917, and Austria has issued no declaration of war against Japan, as stated by the *Bulletin*. On August 27, 1914, the Austro-Hungarian Ambassador to the United States notified the Department of State that Austria-Hungary had severed diplomatic relations with

August	4	Great Britain	vs.	Germany
August	6	Austria	vs.	Russia
August	6	Serbia	vs.	Germany
August	8	Montenegro	vs.	Austria
August	9	Montenegro	vs.	Germany
August	9	Austria	vs.	Montenegro
August	13	Great Britain	vs.	Austria
August	13	France	vs.	Austria
August	23	Japan	vs.	Germany
August	28	Austria	vs.	Belgium
November	3	Russia	vs.	Turkey
November	5	France	vs.	Turkey
November	5	Great Britain	vs.	Turkey
November	23	Turkey	vs.	Allies
November	23	Portugal ²	vs.	Germany
December	2	Serbia	vs.	Turkey

1915

May	19	Portugal ³	vs.	Germany
May	24	Italy	vs.	Austria
May	24	San Marino	vs.	Austria
August	21	Italy	vs.	Turkey
October	14	Bulgaria	vs.	Serbia
October	15	Great Britain	vs.	Bulgaria
October	16	Serbia	vs.	Bulgaria
October	16	France	vs.	Bulgaria
October	19	Russia	vs.	Bulgaria
October	19	Italy	vs.	Bulgaria

1916

March	9	Germany	vs.	Portugal
August	27	Roumania	vs.	Austria ⁴
August	28	Italy	vs.	Germany
August	29	Turkey	vs.	Roumania
September	14	Germany	vs.	Roumania
November	28	Greece (Provisional Government)	vs.	Bulgaria
November	28	Greece (Provisional Government)	vs.	Germany

1917

April	6	United States	vs.	Germany
April	7	Cuba	vs.	Germany
April	7	Panama	vs.	Germany

Japan and that the Austrian cruiser *Queen Elizabeth* had been ordered to join the German fleet in the Far East. On this information, the Department of State issued a neutrality proclamation, dated August 27, 1914. Neither Government has issued a declaration of war. In the first list the last three entries and in the second list the last entry are additional to the list in the *Bulletin*.

² Resolution passed authorizing military intervention as ally of England. *Official Bulletin*, Dec. 11, 1917.

³ Military aid granted. *Official Bulletin*, Dec. 11, 1917.

⁴ Allies of Austria also consider it a declaration. *Official Bulletin*, December 11, 1917.

July	2	Greece (Government of Alexander)	vs.	Bulgaria
July	2	Greece (Government of Alexander)	vs.	Germany
July	22	Siam	vs.	Austria
July	22	Siam	vs.	Germany
August	4	Liberia	vs.	Germany
August	14	China	vs.	Austria
August	14	China	vs.	Germany
October	26	Brazil	vs.	Germany
December	7	United States	vs.	Austria
December	10	Panama	vs.	Austria
December	16	Cuba	vs.	Austria

2. LIST OF NATIONS WHICH HAVE SEVERED DIPLOMATIC RELATIONS

1914

August	13	Egypt with Germany
August	27	Austria with Japan

1916

March	16	Austria with Portugal
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1917

April	14	Bolivia with Germany
April	20	Turkey with the United States
April	27	Guatemala with Germany
May	17	Honduras with Germany
May	18	Nicaragua with Germany
June	17	Haiti with Germany
July	2	Greece with Turkey
July	2	Greece with Austria
September	21	Costa Rica with Germany
October	6	Peru with Germany
October	7	Uruguay with Germany
December	8	Ecuador with Germany

December, 1917.

- 21 SERBIA. Serbian War Mission arrived in Washington. Dr. Milenko Vesnitch is chief of the mission. Personnel of the mission: *Official Bulletin*, Dec. 21, 1917.
- 21 ARGENTINE REPUBLIC — GERMANY — SWEDEN. The Secretary of State of the United States made public further telegrams from Count Luxburg, German Minister to Argentine Republic, to his government. *Official Bulletin*, Dec. 21, 1917.
- 27 CHILE — UNITED STATES. Parcel Post Convention with Chile terminated by mutual agreement. *Official Bulletin*, Dec. 27, 1917.

KATHRYN SELLERS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN ¹

European War, 1914-1917. Naval and military dispatches relating to operations in the war. Part VI, May-December, 1916. 1s. 3½d.

Prisoners and natives in German East Africa, British, Treatment of, by the Germans. Reports on the. (Miscellaneous No. 13, 1917.) 5d.

Prisoners of war, combatant and civilian. Agreement between the British and German Governments concerning. (Miscellaneous, No. 12, 1917.) 2½d.

Sierra Leone-Liberia. Agreement between the United Kingdom and Liberia respecting the boundary between, from the River Makona, or Moa, to the River Magowi. London, June 19-26, 1917. (Treaty Series, 1917, No. 9.) (With map.) 10d.

Switzerland, Order of Council amending Proclamation of March 13, 1917, prohibiting the exportation of certain articles to. Aug. 10, 1917. (St. R. & O. 1917, No. 811.) 1½d.

Trading with the enemy. Consolidated statutory list of persons and firms in countries other than enemy countries, with whom persons and firms in the United Kingdom are prohibited from trading. With notes to British merchants engaged in foreign trade. Complete to Aug. 17, 1917. Prefaced by the proclamation, May 23, 1916, prohibiting trading with certain persons, or bodies of persons, of enemy nationality or enemy association. (No. 33a.) 7½d.

UNITED STATES ²

Alien enemies. Directions to United States marshals and attorneys for enforcement of President's proclamation of April 6, 1917. 3 pp. *Justice Dept.*

¹ Official publications of Great Britain may be purchased of Wyman & Sons, Fetter Lane, E. C., London, England.

² When prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Citizenship. Act defining status of citizens of United States who have entered military or naval services of certain countries during existing war in Europe. Approved, Oct. 5, 1917. 1 p. (Public 55.) Paper, 5c.

Coasting trade. Act giving United States Shipping Board power to suspend present provisions of law and permit vessels of foreign registry and foreign-built vessels admitted to American registry to engage in coastwise trade during present war and for a period of 120 days thereafter, except coastwise trade with Alaska. Approved, Oct. 6, 1917. 1 p. (Public 73.) 5c.

———. Hearings on H. R. 5609, Sept. 6–18, 1917. 2 pts. 123 pp. *Merchant Marine and Fisheries Committee.*

Conscription. Drafting subjects of allied countries, Report to accompany H. J. Res. 115 requesting Secretary of State to open negotiations with view to. Aug. 1, 1917. 15 pp. *Foreign Affairs Committee.* (H. rp. 115.)

———. Report to accompany S. Res. 108 looking to enlistment of certain alien residents. 10 pp. July 30, 1917. *Foreign Relations Committee.* (S. rp. 93.)

———. Report to accompany S. J. Res. 84 to draft certain aliens into military service of United States. July 30, 1917. 5 pp. (S. rp. 94.) *Military Affairs Committee.*

———. Hearings on H. J. Res. 84. Sept. 26, 1917. 43 pp. *Military Affairs Committee.*

Constitutional sources of laws of war. Article by H. L. B. Atkisson. 1917. 36 pp. (S. doc. 86.) *Senate.*

Democracy. American interest in popular government abroad. By Evarts B. Greene. Sept., 1917. 16 pp. *Public Information Committee.* (War Information Series 8.)

Deportation of certain aliens. Report to accompany H. R. 5667, Aug. 4, 1917. 2 pp. (H. rp. 127.) *Immigration and Naturalization Committee.*

Foreign relations of United States, List of publications for sale by Superintendent of Documents. Sept., 1917. 40 pp. (Price list 65, 3d.) *Government Printing Office.*

German corruption fund, Alleged. Hearings on H. resolutions 148, 149, and 151. 19 pp. *Rules Committee.*

German foreign-trade organization, with supplementary statistical material and extracts from official reports on German methods. By

Chauncey Depew Snow. 1917. 182 pp. *Foreign and Domestic Commerce Bureau*. (Miscellaneous Series 57.) Paper, 20c.

Germany, Causes of the war with. Address of W. G. McAdoo, Sept. 28, 1917. 16 pp. (S. doc. 112.) *Senate*.

Germany, Government of. By Charles D. Hazen. August, 1917. 16 pp. *Public Information Committee*. (War Information Series 3.)

———. What our enemy really is. Aug. 27, 1917. 7 pp. *Four-Minute Men Division (Pub. Information Com.)*. (Bulletin 14.)

Great War, 1914—. List of public laws and resolutions enacted in first session of War Congress (65th Congress). Compiled by W. Ray Loomis. 4 pp. *House of Representatives*.

———. Status of legislation given numerically and by subjects, 65th Congress, 1st session. Compiled by W. Ray Loomis. Oct. 10, 1917. 45 pp. *House of Representatives*.

———. Reply of United States to communication of the Pope to belligerent governments. 3 pp. *State Dept.*

———. The nation in arms. Why we are fighting Germany, By Franklin K. Lane; War measures and purposes, by Newton D. Baker. *Public Information Committee*. (War Information Series 2.)

———. War message and facts behind it, annotated text of President Wilson's message of April 2, 1917. 28 pp. *Public Information Committee*. (War Information Series 1.)

International Joint Commission on Boundary Waters between United States and Canada. Supplemental argument in matter of measurement and apportionment of waters of St. Mary and Milk Rivers and their tributaries in United States and Canada under Article 6 of treaty of Jan. 11, 1909, between United States and Great Britain, Detroit, Mich., May 15-17, 1917. 199 pp. Paper, 15c. *State Dept.*

International Parliamentary Conference of Commerce. Letter in reference to, to be held in Paris, France, Oct. 11-14, 1917. 2 pp. (H. doc. 377.) *State Dept.*

International relations. Our national and international responsibilities. Address delivered before Michigan State Bar Association, at Grand Rapids, Mich., June 29, 1917, by Atlee Pomerene. 16 pp. S. doc. 66.) *Senate*.

Japanese mission to United States to study political, social, and economic conditions. Dispatch from American Embassy at Tokyo reporting upon. 3 pp. (H. doc. 378.) *State Dept.*

Liberty Loan of 1917, Second. A source book. 56 pp. il. *Treasury Dept.* (Publicity Bureau.)

Naturalization. Report to accompany S. 2854 to amend naturalization laws. Sept. 26, 1917. 6 pp. (S. rp. 136.)

Neutrality proclamations and regulations, with notes, compiled by George Grafton Wilson. 1917. 153 pp. *Naval War College.* Cloth, 30c.

Panama Canal. Executive order establishing defensive sea areas for terminal ports, and providing regulations for government of persons and vessels within said areas. Aug. 27, 1917. 2 pp. (No. 2692.) *State Dept.*

Repatriation of former American citizens serving in armed forces of foreign states engaged in war with country with which United States is at war. Hearings on H. R. 3647. May 24-June 29, 1917. 87 pp. *Immigration and Naturalization Committee.*

———. Report to accompany S. 2623. Sept. 25, 1917. 1 p. (H. rp. 165.) *Military Affairs Committee.*

Shipping Act. Act to establish Shipping Board for purpose of encouraging, developing, and creating naval auxiliary and naval reserve and merchant marine to meet requirements of commerce of United States with its territories and possessions and with foreign countries, and to regulate carriers by water engaged in foreign and interstate commerce of United States. Approved Sept. 7, 1916. 37 pp. *Shipping Board.*

Ships. Suggested regulations for protection of ships imperiled by mines or submarines, issued for guidance of owners and masters. 1917. 13 pp. *Shipping Board.*

Trading with the enemy. Article upon measures adopted by Germany in retaliation for those promulgated by other nations. By Theo. H. Thiesing. 1917. 7 pp. (S. doc. 107.)

———. Executive order vesting power and authority in designated officers and making rules and regulations under Trading with the Enemy Act and Title 7 of the Espionage Act. Oct. 12, 1917. 5 pp. *State Dept.*

Trading with the Enemy Act. Approved, Oct. 6, 1917. (Public 91.) 5c.

———. Hearings, July 31-Aug. 13, 1917. 2 pts. 236 pp. *Commerce Committee.*

———. Report to accompany H. R. 4960. Aug. 15, 1917. 26 pp.

(S. rp. 113.) (Includes House report 85, 65th Cong., 1st sess., and Memorandum of American cases and recent English cases on law of trading with the enemy, by Charles Warren.) *Commerce Committee.*

———. Conference report to accompany H. R. 4960 submitted by Mr. Montague, Sept. 21, 1917. 12 pp. (H. rp. 155.)

———. Conference report submitted by Mr. Fletcher, Sept. 22, 1917. 8 pp. (S. doc. 110.)

War powers under the Constitution. Address by Charles E. Hughes, delivered before American Bar Association, Saratoga, N. Y., Sept. 4-6, 1917. 14 pp. (S. doc. 105). *Senate.*

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF INTERNATIONAL LAW

THE "ACHAIA"¹

Judicial Committee of the Privy Council

April 7, 1916

LORD PARKER OF WADDINGTON. The *Achaia* was a German steamship of 2732 tons, belonging to the Deutsche Levante Linie, of Hamburg. She arrived at the port of Alexandria on July 31, 1914, in the course of a voyage from Bremen to Alexandria, and thence to certain Syrian ports. She carried a general cargo, part of which was consigned to Alexandria. She had discharged this part of her cargo by 4 p.m. on August 4. Upon the outbreak of war between Germany and this country she was, under the Egyptian decision of August 5, allowed till sunset on August 14 to leave the port of Alexandria. On August 12 she was offered a pass for the Piræus available till sunset on August 14, signed by Lieutenant Grogan Bey, Inspector of Marine of the Egyptian Ports and Lights Administration. According to the evidence of Max Stross, the ship's agent, she made all arrangements to leave, but at the last moment came to the conclusion that it would be too dangerous unless the pass were viséd by the French Consul. Moreover, she believed that all Egyptian ports were neutral. She accordingly elected to remain where she was. The port authorities thereupon seized the ship and disabled her engines. Subsequently, on October 19, 1914, the captain and crew were made prisoners of war, and the ship placed in the custody of the marshal of the prize court. There can be no doubt that what happened amounted to a seizure as prize.

Their Lordships have already decided in the case of the *Gutenfels*² that Egyptian ports must be treated as enemy ports within the meaning of the Sixth Hague Convention. Under the circumstances, however, they are of opinion that the recommendation contained in Article 1 of

¹ 2 Appeal Cases, 1916, p. 198.

² This JOURNAL, July, 1916, p. 628.

that Convention was fully complied with. The vessel was given sufficient time to leave the port of Alexandria. She was offered a pass to a neutral port, and there is no reason to suppose that such pass was insufficient, or would not have been recognized as valid by any belligerent Power. The fact that the vessel did not leave Alexandria under this pass was not due to *force majeure*, but to her own deliberate election not to do so. She cannot, therefore, rely on the provisions of Art. 2 of the convention. Even if Alexandria could be regarded as a neutral port, the fact would be immaterial. The seizure of an enemy vessel in a neutral port, though a breach of neutrality, would not in a court of prize afford any ground for its release.

The case is, in their Lordships' opinion, a clear one. The appeal should be dismissed, and the appellants will pay the costs. Their Lordships will humbly advise His Majesty accordingly.

THE "BOLIVAR" ¹

Judicial Committee of the Privy Council

May 17, 1916

Where substantial injustice would otherwise result, the prize court has an inherent power to set aside its own decrees of condemnation so as to let in bona fide claims by parties who have not been heard, and who have not had an opportunity of appearing. This power is discretionary and should not be exercised except where there would be substantial injustice if the decrees were allowed to stand, and where the application has been promptly made.

THE "ST. HELENA" ²

Judicial Committee of the Privy Council

August 1, 1916

The jurisdiction of the prize court which attaches upon a capture or seizure in prize and extends to all incidental matters, such as questions of freight, is not terminated by the ship or cargo being handed over to claimants without a formal release by the court under Order XIII of the Prize Court Rules.

A British ship which has abandoned a voyage from the United States to Hamburg in consequence of the outbreak of war is not entitled to be awarded by the prize court any compensation in lieu of freight in respect of cargo seized at an English port subsequently to the abandonment of the voyage.

¹ 2 Appeal Cases, 1916, p. 203.

² *Ibid.*, p. 625.

THE "CANTON"¹*Judicial Committee of the Privy Council*

November 15, 1916

The Judicial Committee will not grant special leave to appeal from a requisitioning order made by the judge of the prize court under the Prize Court Rules, Order XXIX, it not being disputed that the goods were urgently required for the prosecution of the war, unless, in their Lordships' opinion, the judge, in determining that there was cause for investigation so that an immediate release to the claimant would be improper, applied the wrong principles or came to an obviously erroneous decision.

Special leave to appeal refused without deciding whether there was an appeal as of right.

Rule in *The Zamora* [1916] 2 A. C. 77 (this JOURNAL, April, 1916, p. 422) affirmed.

THE "GERMANIA"²*Judicial Committee of the Privy Council*

March 20, 1917

A racing yacht is not a merchant ship ("navire de commerce") within the meaning of the Hague Convention, No. 6, Arts. 1, 2 (1), and consequently is not entitled to the immunity from confiscation accorded to merchant ships thereunder. An enemy racing yacht seized in a British port immediately upon the outbreak of war is, therefore, subject to condemnation as prize according to the ordinary rule applied to enemy property seized in port.

THE "STANTON"³*Judicial Committee of the Privy Council*

March 22, 1917

By Order XVIII, r. 2, of the Prize Court Rules, "any person instituting a proceeding, other than a cause for condemnation, or making a claim, and being ordinarily resident out of the jurisdiction of the court, may be ordered to give security for costs, . . . and the proceedings may be stayed until such security is given."

The Procurator-General claimed the condemnation, as goods having an enemy destination or as enemy property, of pork consigned from the United States to the appellant in Sweden. The appellant, who was ordinarily resident at Gothenburg, filed a claim to the goods as his property intended exclusively for consumption in Sweden, the claim being supported by an affidavit and exhibited documents. The

¹ Appeal Cases, 1917, p. 102.

² *Ibid.*, p. 375.

³ *Ibid.*, p. 380.

President, without any evidence on the part of the Crown, made an order that the appellant should give £100 security for costs:—

Held, that it did not appear that the discretion conferred by the rule had not been exercised judicially, and that the order was valid.

THE "MARQUIS BACQUEHEM"¹

Judicial Committee of the Privy Council

April 13, 1916

A merchant vessel belonging to a belligerent Power which enters an enemy port with knowledge that hostilities have broken out is subject to condemnation, although she has derived that knowledge from an enemy warship which has allowed her to proceed on her voyage.

An Austrian vessel, which, after being stopped at sea by a British warship and told of the outbreak of hostilities, was allowed to continue her voyage, entered the port of Suez, apparently in the belief that it would be treated as a neutral port. She was prevented from entering the Canal and was detained. Subsequently she was taken out to sea and conducted to a British warship which seized her as prize:

Held, reversing the judgment of H.B.M. Supreme Court for Egypt, which had made an order for detention during the war and restoration to the owners at its conclusion, that the vessel must be condemned.

APPEAL from H.B.M. Supreme Court for Egypt.

SIR SAMUEL EVANS. The subject-matter of this appeal is an Austro-Hungarian steamship of about 4400 tons gross register.

The court at Alexandria pronounced that the ship had been seized under such circumstances as to be entitled to detention in lieu of confiscation, and ordered that she should be detained until further order. The court further declared that the ship should be restored or her value paid to the owners at the conclusion of the war, in accordance with the provisions of the Hague Convention No. VI of 1907.

The appellant contends that this order should be set aside, and asks for the condemnation and confiscation of the ship as prize.

The respondents seek to uphold the order. They have not brought a cross-appeal and do not ask for restitution.

The facts alleged and relied upon by the respondents in support of the order were that on August 17, 1914, when the ship was in the Red Sea about 150 miles north of Port Sudan, on her voyage from Karachi to Trieste, she was boarded by officers from H.M.S. *Duke of Edinburgh* and informed of the outbreak of hostilities between Great Britain and

¹ 2 Appeal Cases, 1916, p. 186.

Austria-Hungary; that until then those on board of her were ignorant of such hostilities; that an officer from H.M.S. *Duke of Edinburgh* informed her master that he was at liberty to proceed on the voyage, and made an entry to that effect in the ship's log-book; that she so proceeded and entered the port of Suez; and that she intended to prosecute the voyage through the Suez Canal to its termination at Trieste, but was prevented from so doing by the disabling of her engines on August 20.

As was done in reference to Port Said, and the captures of vessels which had been lying there, in the cases of the *Gutenfels*¹ and others, their Lordships in the present case accept that the port of Suez, in the circumstances of the time, is to be regarded as "an enemy port" within the meaning of the Hague Convention.

Assuming this in favor of the respondents, and assuming, for the purposes of this appeal, that the Hague Convention is binding upon Great Britain and Austria-Hungary, their Lordships consider it clear that the case of this ship is not one of those specified in the convention, where only an order for detention during the war, on condition of restoration or of making compensation after the war, should be made.

Upon the undisputed facts the vessel was not in a belligerent or enemy port at the outbreak of war; nor did she enter such a port while ignorant of the hostilities between the two countries; nor was she captured on the high seas while ignorant of such hostilities.

Accordingly, in their Lordships' opinion, the order made in the court below in the terms of the Hague Convention cannot stand.

But even if the ship was not entitled to direct protection under the provisions of the Hague Convention, counsel for her owners contended that, inasmuch as the only knowledge of hostilities which her master had was derived from H.M.S. *Duke of Edinburgh*, and as she had been allowed to proceed on her voyage by the visiting officer from the *Duke of Edinburgh*, she ought not to be deprived of the protection she had claimed under the Hague Convention or to be in a worse position than she would have been in if the *Duke of Edinburgh* had captured her at sea and exercised the right to detain her.

These contentions were not formulated in accordance with any principle of law, and their Lordships are unable to accept them, even if the facts were as alleged.

In order to appreciate the real situation relating to the voyage,

¹ This JOURNAL, July 1916, p. 628.

visit, search and seizure of the vessel, it is deemed useful to make a short statement of the facts as they present themselves to their Lordships.

The ship was loaded at Karachi, bound with a cargo of cotton for Trieste, and with a cargo of 4600 sacks of grain for Aden. She set out on her voyage from Karachi on August 4, 1914. The following entry appears in the ship's log:—

August 4, 1914 — Left Karachi. A few minutes before the steamer left the port the agent of the Society repeated a telegram to the commander of the ship received from the directors of the Austrian-Lloyd, ordering the captain to go direct to Trieste—not to stop at Aden—and on arrival at Suez the passengers would be shipped on to another steamer and taken to their destination.

The vessel was not constructed for passenger traffic. No information was given as to what passengers were on board or what were their respective destinations. Nor was anything said about any steamer on which they were to be shipped at Suez. But an entry in the log on August 26 refers to "arrangements for fifteen Austrian reservists to go to Alexandria en route for Europe."

The summary of the contents of the log between Karachi and Suez (from August 4 to 20) is unusually meagre. It only records the visit from H.M.S. *Duke of Edinburgh* on the 17th. But on a loose sheet of paper discovered in the log-book by His Honor Judge Cator were found these entries:—

August 12-13, 1914. — We navigate at the same speed. At 8:30 Ras Marshay was sighted. As by approaching Aden we might meet the "natanti," and in order not to be seen we navigate without lights, this all the more as we had seen some searchlights from the direction of the harbor.

August 13. — At night we navigate without lights towards the Straits of Perim, keeping our steamer out of the way in order to avoid encounters.

Thus, darkly and furtively, did the ship sail past Aden—a British possession—the port to which a large part of her cargo was destined. There is a significant omission of any reference to the Aden cargo in the master's affidavit and in the petition filed for the claimants.

The ship was navigated with similar precautions through the straits and past Perim Island, also a British possession.

When, on August 17, after traveling some 700 miles or more up the Red Sea, she was visited and searched by the officer from H.M.S. *Duke of Edinburgh*, these incidents of the voyage and entries on the loose sheet were not disclosed to him. The Lieutenant Commander

acted (no doubt upon the information imparted, to which he appears to have given the unsuspecting credence of an honest sailor) upon the assumption that the master of the enemy vessel was not aware of hostilities. He also acted under a misapprehension that some period of grace had been allowed to the ship. He accordingly refrained from capturing her, and made the following entry in the ship's log-book:—

Boarded steamship *Marquis Bacquehem* in latitude 22° 25' N., longitude 37° 8' E., and informed captain that a state of war exists between England and Austria. Being within the period of grace, allowed ship to proceed on her voyage. (Signed) J. K. B. Birch, Lieutenant Commander, R.N., H.M.S. *Duke of Edinburgh*, commanded by Captain H. Blackett, R.N.

It was argued or suggested that this constituted some kind of license for the ship to proceed upon her voyage without any risk of capture, or, at any rate, of any capture or seizure involving more than detention as a penal consequence. But the entry, in fact, was nothing more than a memorandum of his visit and search which the boarding officer was bound, as part of his duty, to record on the ship's log.

The instructions to officers in such a case are prescribed thus:—

The visiting officer should enter on the log-book of the vessel a memorandum of the search. The memorandum should specify the date and place of the search, and the name of Her Majesty's ship and of the commander; and the visiting officer should sign the memorandum, adding his rank in the Navy.

(See Holland's Manual of Naval Prize Law, issued by authority of the Admiralty, 1888, Art. 225.)

What the officer did amounted to no more than if he had said, "From what you have told me, so far as I am concerned you can go."

Having thus escaped capture by H.M.S. *Duke of Edinburgh*, the ship reached Suez on August 20.

There her engines were partly disabled so as to prevent her from entering the Canal; and there she remained until she was taken out to the Roads and captured on October 27.

It was admitted by respondents' counsel that, notwithstanding anything contained in any of the Suez Canal Conventions, it was right for the safety of the Canal to disable the ship so as to make it impossible for her to enter it.

In these circumstances their Lordships are of opinion that the owners of the ship could not after that claim any rights or privileges under any of the Canal Conventions.

In the course of his argument counsel for the respondents did not

rely upon any protection or privilege under the Canal Conventions. After the reply of the Attorney-General, however, in answer to their Lordships, he put forward tentatively an argument that under the conventions the vessel while at Suez was immune from any act of hostility. As to this, it is sufficient to state, in addition to what has already been said, that their Lordships find, as a fact, that the ship did not intend to pass through the Canal in the course of her voyage. She intended to, and did, use Suez as a port of refuge. She made direct for it, although laden with a cargo destined for Aden which would have to be reshipped and carried back about 1300 miles to be delivered at Aden. At Suez her "passengers" were to be shipped on to another steamer and thence "taken to their destination." She regarded Suez as a neutral port, and intended to stay there indefinitely; and, indeed, on October 26 a protest was made against her expulsion from the neutral port.

His Honor Judge Cator, in the court below, said he greatly doubted if the ship ever intended to proceed beyond Suez. Their Lordships do not share any such doubt. On the contrary, they have come to the conclusions above stated.

As to the order made in the court below, the judgments express in terms the difficulties the court felt in ordering detention instead of confiscation.

Judge Cator, in one passage, said:

If the news of hostilities had reached her through any source but that of a British man-of-war, I apprehend that we should have no option but to condemn her to confiscation. That would have been her fate under the old law, and she can only escape by bringing her case within the exceptions specified in the Hague Convention, and when the language of the convention is clear we must abide by it. For although I have every wish to construe its articles in a liberal spirit, the court cannot modify or add to them.

Their Lordships have already declared their opinion that the ship could not be brought within the provisions of the Sixth Hague Convention at all.

In another passage his Honor expressed himself as follows:

I find it hard to decide whether we should confiscate the ship or only order her detention. I have had more difficulty in making up my mind upon this point than any that I have yet had to determine in prize. For although it is true that, after being warned, the *Marquis Bacquehem* might have run for a neutral port, it certainly does seem hard that she should be in a worse plight because the *Duke of*

Edinburgh allowed her to proceed instead of taking her before a prize court, especially as this permission seems to have been given in the belief that the ship was entitled to consideration in consequence of her ignorance that war had broken out. Moreover, no stipulation was made that she should go to a neutral port, and she may have been encouraged in the belief that she could enter Suez in security. On the whole, I think that we should only order detention.

Their Lordships have already shown that this view of the effect of what was done by the Lieutenant Commander of the *Duke of Edinburgh* was erroneous, and that no such result could properly be held to follow his visit and search and his record thereof in the ship's log.

Indeed, if the officer had been truthfully informed of the facts, he would have been justified himself in capturing the ship on the high seas; and if that had been done, the facts would supply sufficient evidence to enable the court to order her confiscation.

It is not necessary to comment further upon the judgments. Their Lordships have only dealt as fully as they have with the case because they differ in opinion from the learned judges of the court below. Upon the simple ground that the ship, after knowledge of hostilities, entered into an enemy port, where in the circumstances she was not entitled to protection or immunity under any international convention, their Lordships are of opinion that she was properly seized as prize and is subject to confiscation.

Their Lordships will accordingly humbly advise His Majesty that the appeal should be allowed, that the order appealed against should be reversed, and that an order be made condemning the vessel as lawful prize to the Crown. The respondents must pay the costs of the appeal.

THE "DAKSA"¹

Judicial Committee of the Privy Council

March 22, 1917

A transfer of goods at sea induced by the transferor's apprehension of hostilities between the state to which he owes allegiance and another state is deemed to be in fraud of the belligerent rights of that other state only; it is not invalid as against a capture by a belligerent state allied thereto unless it is proved, or to be presumed, that it was made in apprehension of war with that allied state.

A presumption arises from the existence at the time of the transfer of a general apprehension of war with the state of the captors, but can be discharged by showing that the transfer was made pursuant to a preëxisting contract.

¹ Appeal Cases, 1917, p. 386.

The *Southfield* (see this JOURNAL, January, 1916, p. 175) approved. APPEAL from a decree of the prize court (Gibraltar), made June 16, 1916.

The respondents, Louis Dreyfus & Co., were a French firm of grain merchants carrying on business in Paris and London and, until the outbreak of the war, having a branch at Hamburg managed by one Meyer, a German subject. In proceedings in the prize court at Gibraltar they claimed as their property a parcel of 1240 chetverts (about 200 tons) of barley forming part of the cargo of the Austrian steamship *Daksa*, which was seized and taken as prize at sea by a British cruiser and taken into Gibraltar. The barley was consigned by Russian shippers to be delivered to their order at Hamburg, the bills of lading being indorsed in blank. The respondents filed affidavits alleging that, by a contract made by Meyer on their behalf on July 13, 1914, they bought from Ehlers & Löwenthal, a German firm at Hamburg, 1240 chetverts of barley for shipment by the *Daksa*; that on July 31, while the barley was in transit, the sellers presented to them the bills of lading and insurance policy under that contract, together with a preliminary invoice for the price, so far as it could be ascertained before weighing; that on the following day payment of the amount of the invoice was made to the sellers, and the documents were handed to Meyer on the respondents' behalf; that the payment was duly notified to the respondents' head office. The contract of July 13, 1914, was not produced, it being stated not to have been brought away from Hamburg upon the outbreak of war. The provisional invoice referred to the contract as being upon c.i.f. terms.

War was declared between Russia and Germany on August 1, between France and Germany on August 3, and between Great Britain and Germany on August 4, 1914.

The Chief Justice of Gibraltar found upon the facts that the transfer was made by Ehlers & Löwenthal and by Meyer in the expectation of immediate war with France and Russia, but that the expectation of war between Great Britain and Germany was not present to the minds of the parties so as to induce them to be guided by it in their business arrangements. Upon the authority of the *Southfield* he accordingly ordered that the proceeds of the barley, which had been sold by order of the court, should be released to the respondents.

LORD PARKER OF WADDINGTON. Their Lordships are of opinion that, in view of the course taken both here and below, the parties to

this appeal must be deemed to have made all such admissions of fact as were necessary to reduce the issue to one single question, namely, Was the transfer of August 1, 1914, to the respondents by the German sellers made under such circumstances as to entitle the captors to treat the barley transferred as retaining, notwithstanding the transfer, the character of enemy property at the date of its seizure as prize?

The principles of prize law upon which the answer to this question depends may, so far as material, be summarized as follows: (1) Where a transfer of goods at sea is induced by apprehension on the part of the transferor of the outbreak of hostilities between the state to which he owes allegiance and another state, such transfer is deemed to be in fraud of the belligerent rights of the latter state, and should such hostilities subsequently arise, and the goods be seized as prize, the transferee cannot (at any rate if he were aware of the apprehension which induced the transfer) set up his own title in order to show that the goods had at the date of seizure lost their enemy character. (2) If at the date of the transfer the circumstances were such as to give rise to a general apprehension of war, the onus is on the transferee to prove the complete innocence of the transaction. It will not be enough to prove his own innocence. He must prove also that the contract was not induced by apprehension of war on the part of the transferor. (3) The transferee may discharge this onus by showing that the transfer was pursuant to a contract made at a time when no such hostilities were apprehended.

In the present case the respondents set up that the transfer of August 1, 1914, was made pursuant to a contract dated July 13, 1914. This may very probably have been the case, but it can hardly be said to have been proved; for the contract of July 13, 1914, was not produced, nor is there any satisfactory evidence as to its terms. Their Lordships prefer to base their advice to His Majesty upon another ground.

The learned judge in the court below held that there was at the date of the transfer no such general apprehension of hostilities between this country and Germany as to throw upon the transferee the onus of proving that the transfer was not in fraud of our belligerent rights. This was in accordance with the view expressed by the President in the case of the *Southfield*, and their Lordships are not prepared to differ from the learned judge upon what is in reality a finding of fact. The only question, therefore, is whether the British captors are, because war between France and Germany was at the date of transfer un-

doubtedly generally apprehended and subsequently broke out, in a better position than they could otherwise have been. In their Lordships' opinion they are not. A transfer induced by apprehension of hostilities is not void. It merely cannot be set up against those in fraud of whose rights it is deemed to have been made. Here there was no transfer which can be deemed to be in fraud of the rights of British captors, because there is nothing to show and nothing to raise any presumption that the transferor was induced to make the transfer by apprehension of war between Germany and the United Kingdom. Their Lordships agree in this respect with the judgment of the court below and with the decision of the President in the case of the *Southfield* already referred to.

Under the circumstances their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

THE "BELGIA"¹

Judicial Committee of the Privy Council

April 7, 1916

Arts. 1 and 2 of Convention VI of the Second Hague Peace Conference, 1907, relative to the status of a belligerent merchant ship in an enemy port at the outbreak of hostilities, are applicable only to vessels within a "port" in the ordinary mercantile sense of the word, and have no application to vessels merely within the limits of a fiscal port.

APPEAL from a judgment of the Prize Court (England).

The appeal was brought by the Hamburg-Amerika Line, the owners of the steamship *Belgia*, 8132 tons gross, which was condemned as lawful prize by the President of the Probate, Divorce, and Admiralty Division (Sir Samuel Evans) on June 14, 1915, in the circumstances which are fully stated in the judgment of their Lordships.

LORD PARMOOR. The question raised in this appeal is whether the steamship *Belgia* is entitled to the benefits of Arts. 1 and 2 of the Convention VI of the Second Hague Peace Conference, 1907. The appellants are a German company, known as the Hamburg-Amerika Line. The master of the *Belgia*, which was bound from Boston to Hamburg, received information at about 9 p.m., on August 3, 1914, when off the Scilly Isles, that war had broken out between Germany and France. The master decided to deviate from the voyage to Ham-

¹ 2 Appeal Cases, 1916, p. 183.

burg and to go to the Bristol Channel, on the ground, as stated in his evidence, "because I was afraid of being captured by a French man-of-war." When off Trevoze Head a Newport pilot was taken on board. The *Belgia* arrived off Newport in the afternoon of August 4, 1914, and, at about 5.50 P.M., proceeded as far as the Bell Buoy at the entrance to the river Usk. Among other places vessels are discharged at the port of Newport in the Alexandra Dock, which is approached by a dredged channel, at the entrance to which is the Bell Buoy. At this point the *Belgia* was stopped by the dockmaster and ordered to anchor off the English and Welsh lightship, in a position alleged to be within the fiscal port of Newport. On the afternoon of August 4 war had not broken out between Germany and England, and Newport was not an enemy port to a German vessel. Arts. 1 and 2 of Convention VI only apply to merchant ships at the commencement of hostilities in an enemy port, or entering an enemy port while still ignorant that hostilities have broken out. Their Lordships, therefore, cannot hold that, when the *Belgia* reached Newport on the afternoon of August 4, Arts. 1 and 2 of Convention VI had any application. It was argued by counsel for the appellants that the dockmaster had no right to stop the *Belgia* at the Bell Buoy, but in the opinion of their Lordships the dockmaster was not exceeding the limits of his authority. There was no obligation to admit the *Belgia* to the Alexandra Dock, admission being a matter of courtesy and not of right.

On the morning of August 5, and after war had broken out between Germany and England, the *Belgia* was captured in the position described in paragraph 6 of the affidavit of the dockmaster as follows:—

The position of the *Belgia* was then as follows: The English and Welsh light vessel bearing about E.S.E. $\frac{3}{4}$ of a mile, and the Spit lay about N.E. 1 mile. She was, therefore, $3\frac{3}{4}$ miles from the Somersetshire coast, and 5 miles from the Bell Buoy (marking the mouth of the river Usk).

It is proved in evidence that the position in which the *Belgia* was anchored at the time of capture is in an open roadstead, and that no cargoes are ever discharged or unloaded at or near this position, and that the only places at Newport where cargoes are discharged or unloaded are in the docks, or at wharves up the river Usk. In ordinary mercantile language, a merchant vessel in such a position would not be within the port of Newport. A port denotes a place to which merchant vessels are in the habit of going to load or discharge cargo, and not a place in an open roadstead at which no cargoes are ever discharged

or unloaded. It was, however, argued on behalf of the appellants that the word "port" in Arts. 1 and 2 of Convention VI included not only a port in the ordinary mercantile sense, but a fiscal port, and that at the time of capture the *Belgia* was within the fiscal port of Newport.

It is not necessary to determine whether the *Belgia* at the time of capture was, in fact, within the fiscal port of Newport, since, in the opinion of their Lordships, Arts. 1 and 2 of Convention VI do not include vessels merely within a fiscal port. These articles are limited to merchant ships, and refer to commercial transactions, not to fiscal regulations. The word "port" is used not only in the collocation "enemy port," but of "a port of destination" and "a port of departure" — well-recognized terms in the language of commerce. To extend the benefit of Arts. 1 and 2 of Convention VI to vessels within a fiscal port would be not only to interpolate a word not used in the articles, but to introduce a new test not relevant to their subject-matter and involving different considerations. That the scope of Arts. 1 and 2 is commercial and not fiscal is further confirmed by the language of the preamble of the convention. The parties to the convention are not concerned with the fiscal regulations in any particular country, but "anxious to insure the security of international commerce against the surprises of war, and to protect, as far as possible, operations undertaken in good faith and in process of being carried out before the outbreak of hostilities."

It is not necessary in this appeal to consider the questions which have arisen as to the conditions under which the provisions of Arts. 1 and 2 of Convention VI become applicable, since, assuming their applicability, the facts do not bring the *Belgia* within their benefit. In the opinion of their Lordships the *Belgia* was captured at sea, and is not entitled to the benefits of Arts. 1 and 2. They will humbly advise His Majesty that the appeal should be dismissed with costs.

THE "CONSUL CORFITZON"¹

Judicial Committee of the Privy Council

June 21, 1917

A cargo of hides and tanning materials consigned in a Swedish ship from South America to a Swedish port was seized in September, 1915, in the course of the voyage. A writ was issued claiming the condemnation of the cargo as contraband. The

¹ Appeal Cases, 1917, p. 550.

consignee, a Swedish subject, claimed the cargo and alleged by his affidavits that it had been bought by him partly for his tanning business in Sweden, and partly for sale to customers in that country. The President made the following order for discovery: "that the claimant do within twenty-one days make discovery on oath of all books of account, letter books, and usual commercial documents relating to the matters in question, including the claimant's business books from January 1, 1914, up to the date of seizure, showing all purchases from the shippers of the goods seized during the same period, or of goods similar thereto, and of the sales of such goods by the claimants, and all contracts, policies of insurance, cables and correspondence relating to the said purchases and sales; and also the same books and documents relating to such goods, or goods similar thereto, which were sold by the claimant for delivery in Germany during the same period." The order was made subject to evidence being filed that the Procurator-General had reason to suspect that the cargo had an enemy destination:—

Held, that there was jurisdiction under the Order IX, r.1, of the Prize Court Rules to make the order, that the documents particularized therein related to the question in the action, and that the discretion of the President to make the order should not be interfered with.

THE "PRINZ ADALBERT"¹

Judicial Committee of the Privy Council

July 3, 1917.

A claimant to goods seized as prize must prove his right thereto at the date when he comes before the court as owner; it is not sufficient that he was owner at the date of the seizure.

When shippers of goods discount a draft upon the consignee and authorize the discounters to hand to him a bill of lading, to the order of, and indorsed by, the shippers, upon his acceptance of the draft, the intention to be inferred, according to general mercantile understanding, is that the ownership of the goods is to pass to the consignee when he accepts the draft. That inference may be modified, or rebutted, by particular arrangements between the shippers and the consignee, and is subject to the rules which arise out of a state of war existing or imminent at the beginning of the transaction. The transfer of the property upon the acceptance of the draft is consistent with the consignee being either a purchaser from the shippers or their agent for the sale of the goods.

¹ Appeal Cases, 1917, p. 536.

THE "SUDMARK"¹*Judicial Committee of the Privy Council*

August 3, 1917

The Suez Canal Convention, 1888, to which Great Britain, Germany, and other Powers were parties, provided, by Arts. IV and VI, that the stay of prizes of war at Port Said or in the roadstead of Suez should not exceed a period of twenty-four hours, except in case of distress. By Art. IX the Egyptian Government, which at the material time was controlled by the British Government, was to take the necessary measures for the execution of the convention.

On August 15, 1914, a British cruiser captured a German steamship in the Red Sea and escorted her to Suez. The prize stayed in the roadstead at Suez for a period of thirty-two hours, a prize crew was then put on board, and she was taken to Alexandria, where she was condemned by the prize court:—

Held, assuming that there had been a breach of the convention, that fact was not cognizable by the prize court as a ground for the release of the prize.

APPEAL from the judgment of His Majesty's Supreme Court for Egypt, sitting at Alexandria in prize (February 5, 1915).

The facts are stated in the judgment of their Lordships.

LORD PARKER OF WADDINGTON. A German vessel, being on a voyage from Colombo to Antwerp via the Suez Canal, was, on August 15, 1914, stopped by H.M.S. *Black Prince* in the Red Sea and ordered to proceed to Suez. It is not disputed that this amounted to a seizure as prize. The vessel arrived in the roadstead at Suez at 1 A.M. on August 17, and at 9 A.M. on the 18th left for Alexandria in charge of a prize crew. She arrived at Alexandria on August 20. The writ in the present proceedings was issued on October 23, 1914, on behalf of His Majesty's Procurator in Egypt asking for condemnation of the vessel as lawful prize.

It was not disputed before their Lordships' board that the seizure of the vessel on August 15 in the Red Sea was a lawful seizure as prize, such as in ordinary course would justify an order for condemnation. The appellant, however, relied on what happened after the seizure, coupled with the provisions of the Suez Canal Convention, 1888, as entitling the vessel to be released.

The first article of the Suez Canal Convention, 1888, provides that the Suez Maritime Canal shall be free and open in time of war as in time of peace to every vessel of commerce or of war without distinction

¹ Appeal Cases, 1917, p. 620.

of flag. The fourth article provides that vessels of war of belligerents shall not revictual or take in stores in the Canal, or its ports of access, except in so far as may be strictly necessary, and that their stay at Port Said or in the roadstead at Suez, shall not exceed twenty-four hours except in case of distress. The sixth article provides that prizes shall be subjected in all respects to the same rules as the vessels of war of belligerents. It is said that the *Sudmark* stayed in the roadstead at Suez for more than twenty-four hours, and thereby committed a breach of these provisions in consequence of which she ought to be released.

That the vessel did remain in the roadstead at Suez for more than twenty-four hours is certain; but their Lordships entertain some doubt whether in so doing she committed a breach of the convention. The captain, in his affidavit of October 18, 1914, says that on reaching Suez he went to the British consulate and requested leave to take in provisions and water, which leave was given. He also says that he was ordered by the captain of H.M.S. *Chatham*, then at Suez, to leave for Alexandria the next morning, but refused unless he were allowed to proceed with his own officers and crew. It is at least arguable that under these circumstances there was such a case of necessity or distress as would render the twenty-four hours' rule inapplicable. Their Lordships will, however, assume that the rule was broken, and will proceed to consider the consequences of such breach.

The convention, which is an international agreement, imposes on the contracting Powers a number of obligations, which, except in the case of the Egyptian Government and the Imperial Ottoman Government, are purely negative. On the Egyptian Government and the Imperial Ottoman Government alone is any positive obligation imposed. By Art. IX the Egyptian Government is within the limits of its powers resulting from the firmans to take the necessary measures for insuring the execution of the convention, and, in case it has not the necessary means at its disposal, is to call on the Imperial Ottoman Government, and the latter government is then to take the necessary measures, giving notice thereof to and concerting with the Powers therein referred to. But for the fact that the Egyptian Government was *de facto* controlled by the government responsible for the breach in question, the fact that neither the Egyptian Government nor the Imperial Ottoman Government intervened would have been sufficient proof that the breach (if any) was purely technical, and did not call for any action on their part.

But even if this inference does not under the circumstances arise, the question remains as to whether a court of prize can properly constitute itself the guardian of the convention and invent and exact penalties for its nonobservance, although no such penalties are imposed by the convention itself. In their Lordships' opinion this question can only be answered in the negative. The jurisdiction of a court of prize does not embrace the whole region covered by international law. It is confined to taking cognizance of and adjudicating upon certain matters (including capture at sea), which in former times were enumerated in the royal commissions under which the court was constituted and are now defined both by statute and by the royal commission issued at the beginning of the war (see Naval Prize Act, 1864, s. 55, sub-s. 5; Judicature Act, 1891, s. 4, sub-s. 1; and Royal Commission of August 6, 1914). It is true that the court must adjudicate on these matters in accordance with international law, including international agreements, but the international law which the court is to enforce is that branch of international law (including international agreements) which relates to matters of which the court is to take cognizance and upon which it is to adjudicate. It has no such roving jurisdiction as suggested by the appellant's counsel.

Considerable stress was laid in argument upon the recent decision of the Supreme Court of the United States in the case of the steamship *Appam*.¹ In their Lordships' opinion that decision has no application to the present case. According to the rules of international law, a prize may, under certain circumstances be taken into a neutral port, but its right to remain there is limited by the continued existence of these circumstances. When these circumstances cease to exist it is the duty of the neutral to order it to leave forthwith, and if it fail to leave to cause its release.

If the neutral allow the prize to remain longer than is warranted by the circumstances it is no doubt guilty of an unneutral act, which may well be made the subject of diplomatic complaint. But their Lordships cannot think that the captor's prize court has any jurisdiction to entertain the question, or is bound, if it consider that there has been an unneutral act, to release the prize on that account.

Assuming that in the present case the Egyptian Government or the Imperial Ottoman Government may be looked upon as a neutral Power which has allowed a prize to remain in one of its ports longer than is

¹ This JOURNAL, April, 1917, p. 443.

BOOK REVIEWS¹

The Rebuilding of Europe. A Survey of Forces and Conditions. By David Jayne Hill. New York: Century Co. 1917. pp. x, 289.

Dr. Hill has placed before us in this modest volume an exceedingly complete account of the development of those tendencies which have brought about the present appalling condition of world affairs. In the preface the author frankly states his conviction that "there can be no new world until there is a new Europe, in which the dogma that the state is a licensed brigand is smitten dead — it is this dogma and not any particular form of mere state organization which is the real enemy that must be destroyed." Later, in Chapter I, entitled "Europe's Heritage of Evil," he traces the growth of state absolutism, an essentially tribal theory of government as reflected in Machiavelli's writings. Men were perforce led to look "for their safety to the nation-state rather than the solidarity of Christendom; and the state, as Machiavelli's gospel proclaimed it, consisted in absolute and irresponsible control, exercised by one man, who should embody its unity, strength, and authority. Thus began the modern world." Here we have the suggestion of a system which necessarily posits military force as the basis of international relations. It would appear that it is precisely this theory which has taken so strong a hold upon a portion, at least, of Europe in our own time; nor has the growth and spread of modern democracy altered this fundamental conception. "Today," our author tells us, "the identity of the sovereign is changed, but not the conception of sovereignty. The people, standing in the place of the sovereign, claim the right of succession to all the royal prerogatives. The national interests have become their interests,— the power, gain and glory of the state are represented to be theirs. Even where it has not entirely superseded the monarch, the nation believes itself to have entered into partnership with him, and the people consider themselves shareholders in the vast enterprise of expanding dominion. Whatever, from an internal and social point of view, the merits or defects of the extension of state functions may be, they are bristling with the

¹ The JOURNAL assumes no responsibility for the views expressed in signed Book Reviews. — ED.

possibilities of war, and when modern nations engage in it, it is no longer a dynastic adventure, but a people's war."

The author truly tells us that before we consider remedies we must correctly understand the world's situation. "If there is to be a new Europe, it must not look for new forms of organization so much as for a new spirit of action. It must renounce altogether its evil heritage."

Chapter II contains an admirable characterization of international ideals; international law need not fear destruction, however severely assailed or violated. "It will continue to reassert itself, and as public order and state authority appear more necessary after a period of domestic anarchy than they ever did before, international law, after an orgy of violence and atrocity, appeals with new strength to the reason of mankind as something that possesses an inherent claim upon our respect and obedience."

At page 62 Dr. Hill frankly declares that "even peace which leaves unsolved the problems of justice is not a desirable aspiration." Since (page 73) the whole future of civilization turns upon the decision whether the state is to be henceforth a creation of force or a creation of law, it is plain enough that a new conception of the moral obligations of the state as contrasted with individuals must first arise before an effective remedy is reached. Today one of the chief problems confronting the world concerns the attitude to be taken by strong states touching their relation to those that are weaker or, in a political sense, insignificant. In effect, thinks Dr. Hill, much could be accomplished through a combination strong enough on the one hand "to establish a system of legal relations and conciliatory policies, and on the other to render military exploitation unprofitable and even a dangerous adventure." (Page 106.)

Chapter V treats of the "Transfiguration of the German Empire" and offers an admirable if brief view of the underlying theory and present development of the German Imperial Government. It would seem to the present writer, however, that the spirit of the imperial system can scarcely be adequately grasped unless we revert to that Romano-Germanic system, whose state conceptions as illustrated in its Reichstag have been handed down in the Bundesrat (Federal Council) of the present Empire.

Indeed, the peculiar system of voting by which Prussia is assigned a fixed preponderance easily marks this unique governing body as an inheritance from older days when each ambitious member of the *Reich*

strove to augment the vote to which he was entitled by securing, through inheritance, marriage, or conquest, the votes of as many others possessing *Reichstandschaft* as possible. Here Kur-Brandenburg (Prussia) obtained a position of vantage, with Hanover, the Palatinate, Saxony, Bavaria, and Austria as rivals, Austria being in the lead. It is of interest to note that Prussia was destined to absorb much of Hanover (Brunswick-Lüneburg), Saxony, and the Palatinate (Pfalz), and is now preparing, to all appearance, the absorption of her chief rival of Romano-Germanic days. When the German Bund was formed in 1815 at Vienna, the leading states of the old Empire were given a voting preponderance based on their standing in the former Reichstag, and this scheme passed into the Constitution of the North-German Confederation of 1867, whence it was adopted in 1870 for the present Empire. It thus became an easy matter to claim for Prussia the former federal votes of Hanover, Hessen, Holstein, Nassau, and Frankfort, to which Waldeck has been silently added. Of the Bundesrat, Professor Arndt, the ablest German constitutional text-writer of our day, says: "In any case the rulers (Landesherren) of the individual states retain in undiminished measure their personal sovereignty and all state and international sovereign rights pertaining to it; they participate in the *Imperium* of the Empire since they are in their totality (also comprising the free cities) the sovereign of the German Empire. (*Verfassung des Deutschen Reichs*, page 53.)

Lastly, it is to be noted that no measure proposed by the present-day Reichstag can become law without first receiving not merely the Bundesrat's *assent* but its *sanction*, this latter term referring to the controlling power of the princely organization which the Federal Council essentially is. It is not to be imagined for a moment that a people which has found its happiness and prosperity for so long under such a system will readily entertain plans of any essentially democratic innovation. Even in the stormy days of 1848-49 the revolutionary constitution of March 28, 1849, proposed as head of the government a Kaiser clothed with power to declare war and conclude peace.

Chapter VI of our work is concerned with international organization, and Dr. Hill well reminds us that a world readjustment as the indispensable sequel to a great war is no new conception, citing (page 175) well-known elaborate but futile plans proposed with such an end in view. Assuredly something more than organization is required. A solution, our author thinks, would lie in the direction of first finding

an acceptable body of world-law supported by judicial decision and enforceable by truly constitutional governments. Still, we are reminded, "There remain, of course, many international questions that cannot be reduced to formulæ of international law or submitted to the decision of judicial tribunals. These are the questions of national policy which every nation must reserve for its own determination." (Page 198.)

The problems are many, and it would appear difficult at the moment to propose any final solution not open to serious criticism, or easily seen to be impracticable in its ultimate working efficiency.

Europe at the outbreak of the present war presented a truly extraordinary complex of governments great and small. What is to be the fate of the neutralized territories, once thought so secure under the ægis of international law? Perhaps the least known of such territories is that of neutral Moresnet lying between the Belgian and German frontiers not far from Aix-la-Chapelle and dowered with a fatal wealth of mines. It was the first district to be occupied by the advancing German arms in August, 1914, although its neutrality had been solemnly sanctioned by Prussia and the Netherlands, June 26, 1816.

Must we not, in truth, if seeking an effective world-arrangement when peace finally comes, and even long prior to that, fix our thoughts upon those deeper problems which concern the mainsprings of all human action? Not, indeed, until both individual men and governments of all political complexions determine to align themselves with the principles of eternal justice and a recognition of the undeniable fellowship of mankind can any lasting basis of settlement be reached.

Dr. Hill's book is worthy the attention of all readers who would clearly grasp present-day world problems. It is an admirable introduction to a subject that must commend itself to every intelligent man.

GORDON E. SHERMAN.

The Monroe Doctrine: An Interpretation. By Albert Bushnell Hart. Boston: Little, Brown and Company. 1916. pp. xiv, 445, including map, bibliography, and index.

A library of no small proportions and no mean quality could easily be assembled from the writings—books, monographs, pamphlets, not to mention articles in the periodical and daily press—by authors of various nationalities, countries and races, representing North and

South Americas, Europe, and Asia, about this most important fundamental doctrine of American foreign policy and diplomacy. The subject is perennial, and the flood of literature that flows around it is so constant that no especial apology is needed for only one more volume, particularly when its laudable purpose is to throw light into the darkness of alien interpretations and to bring order into the chaos and confusion of mind that unreasonably, but not inexplicably, seem to master especially the European and Asiatic whenever he speaks or writes about this subject. Many of these foreign, and some domestic, speakers whom it has been the reviewer's lot to hear, profess a child-like ignorance of what the doctrine really is, liberally asserting this both for themselves and for the rest of humanity, including the Americans. Their purpose is not far to seek; namely, disparagement, and even in some instances ridicule, of the Monroe Doctrine and in fact of our whole policy toward Latin-America and the Caribbean and towards such parts of North America as we compliment with any conscious policy.

We have here an unquestionably valuable book from a well-known teacher, editor, and author of historical and political works many and good. He is a welcome commentator on the "Doctrine," and he speaks from a wealth of experience in the study of American history and government that not only makes interesting and profitable reading, but such as commands respect by an apparent weight of authority that impresses the reader. It will be questioned by many of these, however, after they have read the work in its entirety, whether many of the observations and views expressed by the author himself are in any true sense authoritative as distinguished from mere personal opinion. The main thesis of the book, if not in fact both its major premise and conclusion, is that the Monroe Doctrine as such does not exist; that the doctrine called by that name was in reality chiefly the John Quincy Adams doctrine, and that even this was short-lived and merely temporary in effect on our real policies; that the various doctrines labeled with the name "Monroe," including those which subsist up to the present time, have practically as little to do with "Jimmy" Monroe and his name as with "Chimmie Fadden."

In Part I of the volume the author admits that a doctrine in our policy toward Latin-America existed and was officially stated, whether it is entitled to the name of one man or another, or more than one. In Parts II and III he discusses the growth of American relations and

the framing of "new forms of doctrine to correspond with them" by "Presidents, Secretaries of State and other statesmen," and whether appropriately or not, as the individual reader may decide, he calls these forms of doctrine by the names of the individuals who put them forth in *their writings* or *speeches* rather than in official acts of government, whether these individuals were persons charged by law and practice with formulating our foreign policy, or were mere senators or former senators or, in fact, it would seem, the American public in general. While it would be captious to object to the catch-phrase "paramount interest," employed by Secretary Evarts in his report of March 8, 1880 (p. 170,) as fairly descriptive of one of the fundamental premises in the mind of the Secretary concerned, the author's view and adoption of these words as coextensive with a *new* doctrine supplanting the principles of the Monroe Doctrine entirely will not be readily accepted. This *new* doctrine Professor Hart says, should properly be called, the "American Doctrine" because it was subscribed to and applied from 1869 to 1884, and then ran on through what he calls the "Olney Doctrine" (1895), the "Cleveland Doctrine" (1895), the "*Lodge Doctrine*" (1895), and presumably on through the "Roosevelt Doctrine" (1901), the "Taft Doctrine" (1909), the "*Root Doctrine*," ascribed to Mr. Root when he was no longer in office, and culled from the remarks of this private citizen in an address given before the American Society of International Law, April 14, 1914. In these Mr. Root clearly showed "his unwillingness to admit the alteration of circumstances since 1823," Professor Hart admits. Further Mr. Root most ably defended a thesis the exact contrary of that here attempted to be established by Professor Hart, who denies the permanence of the principles of the Monroe Doctrine by means of, and together with, apparent extensions recognized by most of the Presidents and Secretaries of State since Monroe and Adams. The author would even carry his *new* and so-called American Doctrine through the "Wilson Doctrine" of 1913 to 1915. All of this suggests an exaggerated and fantastic imagination whose flights probably cannot be followed by the credulous vision of the average reader, such as "journalists, writers, and public men," who, the author admits, "have generally found it more convenient to keep on using the old term 'Monroe Doctrine' because," he says, "it was hazy and because it seemed to make earlier generalizations responsible for the purpose and motives of the present time." (p. 162.) Whatever the correct name may be for the doctrine

of the *present*, whether it be that of President Wilson's firm adherence to the principles and name of the Monroe Doctrine, even though it may be eventually broadened into a policy accepted by and applied to the world, or whether it be Secretary Lansing's doctrine of "special interest," as expressed in his Lansing-Ishii agreement, Professor Hart, in his *Search for the Doctrine of the Future*, has discovered the name and "Doctrine of Permanent Interest" which advises the world that our policy is not temporary, transient, nor radically changeable, after it has been adopted, but that it is here for all time as respects Latin-America and the Caribbean regions and perhaps certain Pacific and Asiatic territories. (pp. 349-403.) Many things in the book, and especially Part IV ("Present-day Doctrines"), in which he discusses not only the "Latin-American," the "Drago," and "Calvo" doctrines, but also the "German Doctrine" and "Pacific and Asiatic Doctrines," and a portion of Part V ("Present World Conditions"), which contains a chapter on the "Doctrine of American Protectorates" in which Professor Hart speaks of the "protectorates" of Cuba, Panama, Santo Domingo, Nicaragua, and our attitude toward Mexico in the same direction, as if the United States' "Fixed Policy of Protectorates" was as definite in intent and as decided in quality as the relations of England to Egypt or of France to Morocco — these phrases of the author's own coinage, let me repeat, and other of his statements seem to indicate clearly that what the author has in mind oftentimes when he speaks of the Monroe Doctrine is the entire sum total of the foreign policy of the United States outside of specifically British and Continental relations of Europe with us respecting their own local and African affairs. He seems to forget that the Monroe Doctrine, important as it is, is but a *part* even of our relations with Latin-America.

In only one, but a serious, respect the work bears a remote but definite resemblance to such unscholarly, not to say unhistorical and ridiculous, productions as *The Monroe Doctrine: An Obsolete Shibboleth*, and portions of *Pan-Americanism*, and *The Challenge of the Future*, the example and deductions of whose authors, it is safe to say, Professor Hart would be the last consciously to approve or imitate. But apparently, scholarly and patriotic as he is, and advocating a strong American policy in reality, he has allowed himself loosely to ramble into a forest of verbiage and imaginings where, pottering more or less with descriptive titles and names for a policy and its various phases and expansions as if they were different things and realities in themselves,

he has permitted himself to lose all sense of the historical development of the foreign policy of the United States in general, and of that particular part of it that has had a clearly marked and discernible growth at the hands of American executives from Washington to Wilson, with the aid of their Secretaries of State, and perhaps of some others, and one which has retained with almost all of them, and probably will continue to retain it, the designation "Monroe Doctrine." Unwittingly, unlike the authors of the books just mentioned, he has in this way, and explicitly in his preface, done as much to discredit the Monroe Doctrine and a safe American policy with respect to a part of our Latin-American and Caribbean affairs as any recent author, American or otherwise. The net result of the work, so far as it is a critique, is destructive, not constructive, in respect to an important and vital part of American foreign policy, and in actual use of the book with both graduate and undergraduate students the reviewer has found this to be the invariable effect upon their minds. It has lowered, without historical justification, the respect of such students for the political and diplomatic ideals of the United States and for the statesmen who had a part in forming them. This is certainly not the intention of the author, who is a seeker after truth, but it is the effect of his comments and not of the copious quotations with which the book is filled. It is regrettable that the uninformed and untutored reader or student should meet in the first two paragraphs of the preface to the book the statements that "the Monroe Doctrine itself is tinged with misapprehensions and abounds in contradictions" and "Its meaning and its immediate cogency are still uncertain and disputed." Assertions of dogmas are not their proof, and as to the two matters quoted, as well as to many similar statements, the book offers, not the demonstration of proofs, but the assertion of the author's opinion, which a foreign reader or an uninstructed student might confuse with "evidence."

The chief merit of the volume lies in the liberal employment of a method that has been previously used by other authors in this field, the quotation of the *words* of those whom he considered to have best outlined, or influentially or officially stated, the Monroe or an American doctrine. Had there been added to this a succinct statement of all the principles established by the actual cases in which the executive wing of the government has applied and defined the Monroe Doctrine, a much clearer conception of the basic and additional principles which make up the present Monroe Doctrine would have been given both to

the author and his readers. The student, and even the general reader, would have been glad if a citation had been made, either in a footnote or in the text, to the actual source (including edition, if more than one exists) from which the author took each quotation of any length or importance, that he might, if he desired, consult it for further information or to have the context clearly in mind when considering the writer's view or the author's deductions from that view as quoted. In a work of this kind, designed mainly for students, this ordinary good practice of the historian is greatly missed, for in only a few cases is it clearly and definitely stated in the text where one may look for the source of the excerpt. With such omissions as are noted supplied, the book might lay just claim to being a comprehensive, or indeed the most comprehensive, work on the subject by an American.

The volume has seven parts or divisions covering The Original Monroe Doctrine, 1775-1826; Variations of the Monroe Doctrine, 1827-1869 (including such chapter headings as, The United States out of her Sphere, 1845-1853; Doctrine of American Supremacy, 1853-1861; How to get on without Monroe, 1861-1869); The American Doctrine, 1869-1915; Present-day Doctrines; Present World Conditions; Doctrine of Permanent Interest; and a bibliography called Materials on the Monroe Doctrine.

It is well indexed and well printed, and is written in a fresh and vigorous style, partaking in an unusual degree of the frank and attractive personality of its author, which wins and fastens the interest of the reader whether he can indorse the opinions stated or not. The book is, and will continue to be, useful in colleges and universities in the hands of informed and intelligent teachers, who may add such correctives as they may severally regard necessary.

The criticism of Cleveland and Olney (pp. 202-204) somewhat expands the position taken by Professor Hart on page 302 of his *National Ideals* and in his article on the "Monroe Doctrine in its Territorial Extent" (published in 1906 in volume 32, No. 39, of the Proceedings of the United States Naval Institute), and it will impress the average reader as an unmerited one, particularly when the motives ascribed to Secretary Olney on pages 204 and 205 of the book are in direct contradiction to each other. President Cleveland, regardless of his own most positive statements to that effect in his *Venezuela Controversy* and *Presidential Problems*, is given no credit for an honest attempt to prevent a big state from doing apparent injustice to a small one, even

if the United States had practically to threaten war to secure a fair arbitration of the claims of the small state. The treatment of the Panama Congress of the time of Adams and Clay (pp. 93-98) is much less satisfactory than that in an earlier work of Professor Hart, *The Formation of the Union* (1910, p. 253), and that in a book by Professor Frederick J. Turner, *Rise of the New West*, edited by Professor Hart in his *American Nation Series*. It is also difficult to see why the doctrine of American expansion, so far as it has been applied in the Caribbean or elsewhere, is hostile and at variance with the doctrine of Monroe, or why the titles "permanent interest" or "American Doctrine" are not equally applicable to the Monroe Doctrine throughout its course, if it were ever conceived to stand for any interests of the United States and of Latin-America that were more than merely temporary and evanescent. President Wilson at least, in his memorable address to the Senate, on January 22, 1917, seems to have no particular aversion to either the name or the principles of the Monroe Doctrine: "I am proposing," he says, "as it were that the nations should with one accord adopt the doctrine of President Monroe as the doctrine of the world. . . . I am proposing that all nations henceforth avoid entangling alliances which would draw them into competitions of power."

JAMES CURTIS BALLAGH.

Leading Cases on International Law. By Lawrence B. Evans. Chicago: Callaghan & Co. 1917. pp. xix, 477. \$3.50.

This is a work of 477 pages, which the author dedicates "To My Friend, Robert Lansing." Mr. Evans took his A.B. at Michigan and his Ph.D. at Chicago University. He has served for some years as Professor of History at Tufts College and had already compiled and published *Leading Cases on Constitutional Law*. The present collection of cases was intended to be a brief one and in such form as to make it useful to students. Therefore "it is confined to decisions from British and American jurisdictions."

There are 102 cases included, 48 decided by British and 54 by American courts. Some of the cases are "abbreviated" by the omission of "unessential matter," but the facts are given and enough of "the opinion to show the line of reasoning by which the court reached its conclusion." There are references to about 800 cases and to more

than 200 titles. The citations are largely to monographs upon special topics, but two works are habitually and throughout referred to, namely, Fauchille's edition of Bonfils' *Manuel de Droit International Public*, which is taken to represent the European continental view, and Professor John Bassett Moore's *Digest of International Law*, which, I take it, is thought to exhibit the English and American view. The author also expresses his especial obligations to Prof. Hershey's *Essentials of International Public Law*.

The cases are arranged in thirteen groups or chapters dealing with allied themes. Many of the older decisions selected are different from those included in the well known and standard collection of cases in international law edited by the late Dr. Freeman Snow of Harvard and revised and greatly enlarged by Dr. James Brown Scott. Of course, many of recent date could not be included in the older volumes.

The list of authorities cited, other than judicial decisions, covers six pages in the statement of contents, and the extended reference to legal periodicals and monographs seems a valuable and somewhat novel feature in this collection.

Among the more modern passages cited which have especial interest this, from the Higher Prize Court of Japan (see p. 14), enforces a view sometimes overlooked by students:

The rules of capture at sea resolved upon by the Institute of International Law at Turin . . . are nothing more than the desire of scholars, open to further discussion by the Powers. Under international law they have no authority. . . . As to the advocates' vague argument for governing the solid business of the day by the principles of universal benevolence, it is inadmissible. It ignores the fact that war is indispensable in the present state of international intercourse.

Another modern case given in part is *Mortensen v. Peters*, 14 Scots Law Times, R., 7, a decision by the High Court of Justiciary of Scotland, rendered in 1906. This reviewer has called attention in print to the fact that the Ambassador of Great Britain (Lord Bryce) intimated in writing that the British Government had not adhered to the doctrine of that case, though perhaps this may not impair its authority as to the special point to which it is here cited, namely the relations of international law to municipal law.

The new work cannot well replace the more extended collection of Dr. James Brown Scott (founded on that of Dr. Snow) covering nearly 1000 pages, especially if the older compilation is brought to date, as

is purposed, by a new edition. Dr. Evans' volume, however, has a distinct advantage in its condensation, its modernity, and its extended reference to authoritative periodical monographs, often so difficult to discover and yet so illuminating and convincing when found. In these points the new work must prove of especial convenience and value.

CHARLES NOBLE GREGORY.

International Conventions and Third States. By Ronald F. Roxburgh. London and New York: Longmans, Green & Co. 1917. pp. xvi, 119. \$2.50.

This is one of the "Contributions to International Law and Diplomacy," edited by Professor Oppenheim. The author is an English barrister, and was recently a Whewell international law scholar at Cambridge. His general conclusions postulate two leading principles. One is the existence of a "Family of Nations," which family, as to certain relations, is to be regarded as a unit. The other is that "the express or tacit consent of all states of importance is essential to permanent neutralization" (p. 71).

He refers the proof of any rule, claimed to be of force in international law, solely to the consent of the members of this family (p. 73). If some of them make a treaty which introduces, as to some particular matter, a new rule affecting states not signatory Powers, one or more of those states may, with the consent of those who are the signers, come in to share its benefits or obligations, but in the absence of such a consensual act the treaty can only become a rule of international law by long and unanimous recognition of it, as such, by the general Family of Nations. Such unanimity he would not require to be absolutely complete. Small Powers must expect to submit to rules which greater ones generally accept. International law grows by custom and long practice; and, independently of contract, is their proper and authoritative product (p. 74). A usage of nations the author regards as not less than a custom, necessarily implying that the nations concerned act under the conviction that it is legally necessary to act in that particular way (pp. 76, 77, 91). In other words, they must realize that their practice recognizes a certain rule as in fact law already, which their recognition confirms and makes one *de jure*.

But who is to say if a custom of nations exists? Municipal law has its rules of evidence and definitions as to claims of a custom between

men. International law has no such aid, and no such fetters. It preserves its elasticity at the cost of precision (p. 79).

Mr. Roxburgh draws a distinction between international law and universal international law. The latter is the natural and almost necessary result of the former, but it is not identical with it. The Declaration of Paris may now fairly be deemed a part of international law, but the refusal to accede to it for so many years by the United States and Spain made it something less than universal. Spain's final adhesion has hastened the end, and it is not probable that the United States will much longer isolate herself from the civilized world in claiming the right to reintroduce privateering (pp. 92-94). The situation would have been the same had the sole nonassenting Power been, not the United States, but the weakest of independent nations (p. 103).

Westlake's theory of "Imperfect Rights" Mr. Roxburgh rejects (p. 99). A right, conditioned or unconditioned, must, as to a stranger to a contract (within the limits of the condition if any), be absolute, or it is nothing.

The author would put in a class by themselves, as "International Settlements," treaties between the leading Powers, intended to be of binding force upon or in favor of the whole "International Community." If the nonsignatory Powers abide by such a treaty, and come to believe that it is so binding on them by international law, then it is so binding upon them and is international law (p. 82). The cause of its being such is the effect of considering it such; though this may have no better foundation than a mistake of what constitutes a legal obligation. Here again the notion of the unity of the Family of Nations is invoked to support the doctrine for which the author contends (p. 84).

International rivers form a natural subject for its application. "The widespread conviction that today free navigation is postulated by an universal international rule is strong evidence that where free navigation is *already enjoyed*, it is enjoyed of right apart from treaty" (p. 88).

International servitudes are briefly discussed, and their character as, if anything, being rights *in rem*, sharply distinguished from rights by contract, though these be real rights (p. 106). International leases the author regards, when either party subsequently is at war with a third state, as amounting, for the purposes of the war, to a transfer of sovereignty to the lessee (p. 110).

The book is clearly thought out and well arranged. There is little of repetition, and the author confines himself closely to his immediate subject. He has, however, some favorite turns of expression which he makes pets of. Anson, in his *Law of Contracts*, quotes from the year books the phrase that "the devil himself knows not the thought of men." The quaintness of this statement makes the author repeat it twice, with a solemn reference each time to his authority for it (pp. 48, 79). So he reiterates half a dozen times the maxim of modernized Roman law, *Pacta tertiis nec nocent nec prosunt*, but makes no reference to the more definite statement of the *nec nocent* rule in the *Digest*, II, 14; *de pactis*, 1, 27. § 4.

SIMEON E. BALDWIN.

War in Disguise; or the Frauds of the Neutral Flags. By James Stephen.

1805. Reprinted from the third edition. Edited by Sir Francis Piggott, with an introduction by John Leyland. London: University of London Press. 1917. pp. xxxiv, 215. 6s. net.

It does not often happen that a book of permanent value, written by one of the prominent lawyers of the day and which passes through three editions at home and two editions abroad within five months of publication, is so completely lost sight of by succeeding generations as has been the case with James Stephen's *War in Disguise*. When Sir Francis Piggott undertook the present publication of it, so rare had copies of the third English edition become that it was impossible to obtain one for the use of the printer, and it was necessary to photograph the copy in the British Museum.

The interest of the present generation in the personal history of James Stephen is enhanced by the fact that he is the ancestor of Edward and Albert Venn Dicey and of Sir James Fitzjames Stephen, and the brother-in-law of Wilberforce, in whose agitation against the slave trade he bore an active part. His interest in that subject had been aroused by his experience as a practitioner at the Bar of the West Indies, where he also had opportunity to witness the use made of neutral flags as a means of covering contraband trade. When he took up his residence in London as a practitioner before the Prize Court, he could speak of the Rule of 1756 and of the doctrine of continuous voyage with a full knowledge of the commercial transactions which brought that rule and doctrine into existence. He was largely re-

sponsible for the Orders in Council of 1807, and the pamphlet now reprinted, which issued from the press on the day that Trafalgar was fought, was a defense of the principles upon which the policy of the British Government toward neutral trade with the enemy was based. The influence of the work upon English thought and policy was thus stated by Lord Brougham: "It is impossible to speak too highly of this work, or to deny its signal success in making the nation for a time thoroughly believe in the justice and efficacy of his Order in Council."

In his thoughtful introduction to the present edition, Sir Francis Piggott points out that one of the great merits of Stephen's pamphlet was his clear exposition of the principle upon which belligerent interference with neutral trade, whether by blockading the enemy or by the capturing of contraband, is based. There is no particular magic in the term "blockade," or even "effective blockade," or in the term "contraband." These are simply two examples of the principle that a belligerent is justified in preventing a neutral from rendering any assistance to his enemy. If the neutral devises means of assisting the enemy which are not covered by the long-established rules of blockade and contraband, it must be expected that the belligerent will prove equally inventive in devising means to counteract such assistance. The present war has furnished many examples of this.

Since the beginning of the present war there have been many ill-founded statements as to the new situations which have arisen, and which will necessitate the re-formulation of the rules of international law. An examination, however, of the principles involved will show that the difference between the legal questions arising in the present war and those in previous wars are more superficial than real. The prize decisions made during the past three years by Sir Samuel Evans and by the Judicial Committee of the Privy Council follow very closely the lines laid down by Lord Stowell, and a reader of Stephen's pamphlet might easily believe that his statements with regard to the commercial policy of the enemy and the attitude of the United States as a neutral applied to the first years of the present conflict.

Sir Francis Piggott has rendered an excellent service by the republication of this pamphlet, which he has made easy to use by his notes and by his excellent introduction. The short study contributed by John Leyland entitled "1805" helps to visualize the situation in which the pamphlet was written.

LAWRENCE B. EVANS.

Die Völkerrechtliche Stellung des Papstes und die Friedenskonferenzen.

By Dr. Joseph Müller. N. Y.: Benziger Bros. 1916. pp. xvi, 235.

As a result of considerable experience, we have learned to be somewhat wary of German books on historical, political, or religious subjects which profess to be written in an *objektive* or impartial spirit and with an eye single to *wissenschaftliche* interests.

The book under review is no exception to this rather general rule. Like most German works of this sort, it purports to be an impartial, scientific study and is furnished with all the familiar paraphernalia of German erudition in the way of footnotes, bibliography, and an appendix containing much documentary material (very useful, if not too carefully selected for the author's purpose).

Die Völkerrechtliche Stellung des Papstes is really a plea (an argument if one wished to dignify it by that name) in favor of the restoration of temporal power to the Pope and of the participation (or rather leadership) of His Holiness in the establishment and maintenance of peace in a war-weary world. It seems that the temporal power is essential to the exercise of the Pope's spiritual functions, being necessary in order that he may act independently of other princes, Powers, or potentates.

A considerable section of the work is devoted to an account of the relations between the Vatican and the Quirinal, especially in connection with the events of 1870. But the most remarkable part of the book is perhaps that which exposes the reasons why the temporal power of the Pope should be restored and His Holiness called upon to mediate a peace between the warring nations. These are to be found mainly in his lack of partisanship, his moral authority throughout the world, and a policy of neutrality in the midst of Teutonic horrors and excesses which is hard to reconcile with the high moral aims claimed for him. Then, too, was he not complimented in the German Reichstag for securing an exchange of prisoners; was the Papal delegate not well received in Tokyo; did His Holiness not promise to restore to the Belgians the library destroyed at Louvain; has not even the Mohammedan press praised him; have not Latin-American States on occasion chosen him as arbitrator of their disputes; and did not the Austro-Hungarian Ambassador declare in 1877 that his government was dissatisfied with the Law of Guarantees of 1870?

Surely such evidences of popularity and esteem should not pass

unrewarded. Have not the misguided Socialists and the wicked Free Masons failed in their misdirected efforts to establish international peace? Why not try Pope Benedict?

AMOS S. HERSHEY.

L'Italia e l'Austria in Guerra. By Professor Enrico Catellani. Firenze: G. Barbèra. 1917. pp. 136. Lire, 2.50.

Professor Catellani's pamphlet was published, so the author states in the preface, to combat the common impression that in their methods of waging war the Austrians are less barbarous than their allies. It differs from most of the many recent pamphlets on "atrocities" in that scholarly and conservative reasoning is combined with simple and popular style. The clarity of thought, the simplicity of grammatical construction, and the absence of the labored style often found in Italian legal discussions makes this pamphlet easy reading even for those who read ordinary Italian only with difficulty.

The principal topics taken up by Professor Catellani are Italy's justification for the declaration of war upon Austria, methods and instrumentalities for waging war, the treatment of prisoners and wounded, the government of occupied territory, and reprisals. There is practically no discussion of legal principles, the author confining his work to the relation of breaches of unquestioned laws and customs of war and of the conventions of The Hague. Many of the acts related would have caused mental shock to readers four years ago; at the present time they would not arouse particular interest, since they are not in kind different from those related of the Germans time and again in our newspapers and periodicals. The evidence is merely cumulative. There is the same use of gas, the same use of expanding and explosive bullets, the same unnecessary bombardment of hospitals and undefended cities, the same destruction of merchant ships by submarines without warning, the same use of noncombatants as shields against attack, the same simulated surrender, the same ill treatment of wounded, the same refusal of quarter, the same levies and requisitions upon territory temporarily occupied, and the same sack and pillage. The author further complains of the needless killing of the wounded and the killing of unarmed prisoners after the acceptance of their surrender and the close of the combat.

Professor Catellani's pamphlet is now particularly timely in view of

the declaration of war by the United States upon Austria and in view of the invasion of Italian territory by the armies of the Central Powers.

NELSON GAMMANS.

The Immediate Causes of the Great War. By Oliver Perry Chitwood.
New York: Thomas Y. Crowell Co. 1917. pp. xii, 196. \$1.35 net.

Though the literature concerning the causes of the Great War is, as is generally understood, rather overabundant, so much so that when one picks up a new volume on this subject, one does it with a certain sense of doubt and a small amount at least of suspicion, doubt as to its adding anything new and suspicion as to its bias, yet there is undoubtedly a place for such a brief summary as Professor Chitwood suggests for the sake of the college student who has not the time to devote to the study of the more extended statements. It is to meet this need that this book strives to be different from its predecessors, and it is by no means unsuccessful in the rôle of a well-condensed manual of the immediate causes of the war.

It rests entirely for its principal story upon the official documents from the governments involved in the war; it is, in fact, as the publisher characterizes it, "a digest of the published correspondence of the Powers." Only the first chapter, "Some Indirect Causes," in which Mr. Chitwood summarily reviews the last forty years of diplomacy, is based upon secondary material, mainly the larger works on this same topic and those on recent European history. Selections must necessarily be made when a writer uses such a great mass of documents, and this selecting has apparently been done in a spirit of fairness consistent with the high standard of historical accuracy shown throughout, and the emphasis placed upon facts, and facts only, without partisan interpretations.

There are three chapters on the Serbian phase, followed by two on the Efforts to Prevent War and on Efforts to Isolate the War, which with the one following on the Broadening of the War Area to include Russia are quite successful, on the whole, in giving the essential facts clearly. Equally so are those on Great Britain's Entry into the War, on Belgian Neutrality and, in general, those on Turkey and Japan, on Italy and on the Lesser Belligerents (Bulgaria, Portugal, Roumania). The United States is not mentioned.

Mr. Chitwood is less happy in his conclusions. The reviewer is inclined to take exception to the idea that this war began in a game of bluff; the evidence, even as presented by Mr. Chitwood, does not bear out this conclusion. Instead, it is quite possible to believe that this much, at least, was the deliberate purpose of Germany; the move to reduce Serbia from the ranks of independent states and to make the Teutonic Empire of the Near East approach reality. The incapacity shown by the diplomats may not have been stupidity at all, but a lack of knowledge by one side of the plans being matured by the other. The representatives of France, Russia, and England were quite in the dark as to the Austro-German purposes and were artfully kept so.

It is not safe to emphasize overmuch the official expression of what may be only one side — perhaps the better side, perhaps not, — of a nation's mind. We may strive also to divide the diseases of the European body-politic into chronic and acute, but should we discuss too exclusively the acute alone, we may not give due attention to the chronic ailments suddenly coming to a head. A book, therefore, upon the immediate causes of the World War may easily dwarf unduly the great underlying causes which reached a focus in 1914. This effect, Professor Chitwood's first chapter does not sufficiently counteract. The index is small, yet serviceable, but maps are conspicuously lacking.

A. I. A.

The Deportation of Women and Girls from Lille. New York: George H. Doran & Company. 1917. pp. 81.

This is a collection of documents in English translation relating to the deportation of women and girls from Lille, Roubaix, and Tourcoing, by the Germans during the spring of 1916. The collection embraces the note of protest addressed by M. Briand to the Powers on July 25, 1916, together with various documents, French and German, including notices and placards posted by the German military authorities, protests of the mayor and bishop of Lille, letters written by some of the victims, and a large number of depositions made before local magistrates. It contains the evidence of a cruel and brutal measure without precedent in modern civilized warfare: the sudden arrest and tearing away from their homes of some 25,000 inhabitants of an invaded district, young girls, women, and men up to the age of fifty-five years,

without regard to their social position; and the carrying of them away to distant parts unknown to their families for compulsory labor under military supervision and at such tasks and at such wages as their captors saw fit to prescribe.

The account of the procedure of arrest and deportation reads very much like the description of a slave raid on the Gold Coast in the seventeenth century. Families were broken up: young girls were huddled into dirty cars with men of debased characters; in the regions to which they were taken women were compelled to do laundry work for German soldiers and to act as body servants for German officers; men were forced to take part in military operations against their own troops, and men and women alike were forcibly employed as screens to shield German columns from attack by French troops. The excuse alleged by the German authorities was the benevolent desire to find employment for the population of the three cities mentioned, but the real reason was to find laborers to harvest the crops in northern France for the feeding of the occupying armies. One may search in vain the Hague Conventions for a syllable of authority to justify the wholesale kidnapping, deportation, and enslavement of the peaceful civilians of an occupied district. As stated above, such a measure is without precedent in modern wars and no respectable authority can or ever will be found to defend it. The voice of the civilized world was raised in protest, but it made no impression on the gallant knights of German *Kultur*, and a few months later they proceeded to carry out on a much larger scale the same brutal policy in Belgium.

J. W. GARNER.

Recueil de Rapports sur les différents points du Programme-Minimum de l'Organisation centrale pour une Paix durable. Vol. III. The Hague: Martinus Nijhoff. 1917. pp. 383.

This third volume of reports partakes of the international character of its predecessors.¹ Its ten essays are written, in French, German, or English, by two Swedes, two Austrians, two Hollanders, one Swiss, and three Americans.

The problem of nationality is discussed by Dr. Karl Hildebrand, of Sweden, and Dr. Rudolf Laun, of Austria, both of whom reject as

¹ Cf. this JOURNAL, Vol. XI, No. 1 (January, 1917), for a notice of Volumes I and II.

Utopian the plan of making states coterminous with nationalities, but admit that there should be within each state civil equality, religious liberty, and the free use of native languages, — at least in so far as the *private*, as opposed to the *public* and especially the *official*, use of language is concerned. Dr. Hildebrand believes that each question of nationality should be studied and answered separately, in accordance with actual facts, and that these questions can best be answered by each nation after the war, and not in the treaty of peace. Dr. Laun refers to the eight nationalities which contribute to the population of Austria, no one of them being in the majority, and argues that as Austria is “the cradle of protection to national minorities” (*die Wiege des nationalen Minoritätenschutzes*) it should become the model of “the law of nationalities” (*Nationalitätenrecht*).

Dr. Van Houten, of Holland, writing on the development of the Hague Conference as “The Way Out,” outlines and advocates a “Council of States for International Affairs” to represent the Conference when not in session, and to act as a council for conciliating disputes and for administering such tasks as those connected with the freedom of the sea, a sea-police, contraband, etc.

Dr. Lammasch, of Austria, contributes a careful critique of the Dutch committee’s plan of an international organization for the pacific settlement of disputes. In the course of this, he supports the development of a genuine international court and commissions of inquiry and conciliation, but rejects (as does the Dutch committee also) the economic boycott and military force as sanctions of international institutions.

Writing under the caption of “An International Police,” Baron Palmstierna, of Sweden, rejects the economic boycott as an insufficient sanction of international law and also a genuine international police force as impracticable, at the same time rather doubtfully advocating the pooling of all national armaments for this purpose.

Our own Mr. Taft advocates without any doubt or hesitation the use of both the economic boycott and an alliance of national armaments for the preservation of the peace, and answers in familiar form a half-dozen objections to such a sanction.

A reduction and limitation of armaments on land and sea, at the end of this war, is demanded by Hon. W. H. de Beaufort, of Holland, who regards this step as necessarily *pari passu* with the development of a satisfactory court of arbitration. Dr. Broda, of Switzerland,

coincides with this opinion, and discusses in much more detail than is usual some concrete plans for the limitation of land, water, and aerial armaments.

Mrs. Fannie Fern Andrews, of Boston, sketches the history of the American attempt to secure the exemption of noncontraband private property from capture in warfare on the sea, and quotes a number of American publicists, most of whom are opposed at present to this "American" proposal. She also states some of the current problems associated with contraband, blockade, the conversion of merchant ships, enemy merchant ships, war zones, mines, and submarines.

The last and the longest essay is contributed by Mr. Denys P. Myers, also of Boston, who writes on "The Control of Foreign Relations." This is an instructive historical account of the development of democratic control over foreign relations in various states of the Old World and the New, and shows the real progress that has been achieved in the past, while enabling the reflective reader to realize how much needs to be accomplished along this line, as along so many others, before the world is truly safe for democracy.

The volume as a whole, though by no means definitive, of course, on any of its topics, is well worth while, and the society under whose auspices it is published is to be congratulated on its persistent and intelligent efforts to internationalize the world's public opinion on the most pressing international problems of our time.

WM. I. HULL.

PERIODICAL LITERATURE OF INTERNATIONAL LAW

[For list of abbreviations, see p. 176.]

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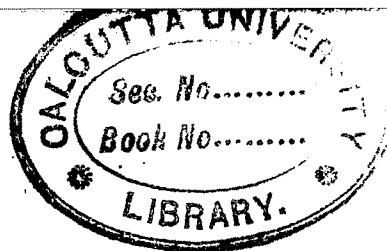
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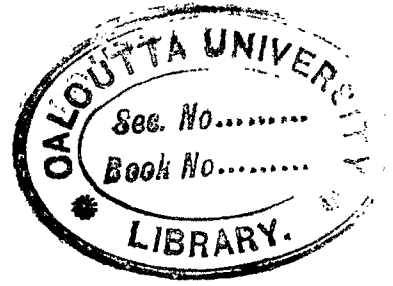
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THE NEUTRALITY OF SWITZERLAND

I

THE VIENNA TREATIES

SWITZERLAND'S neutrality, as exhibited during the present European conflict and also on the occasion of other wars of the past century, does not found itself simply upon principles of international law, but rests directly upon a series of explicit international and constitutional documents and is deeply interlocked with the historical development of the country and with the foundation and growth of its government. Differentiating itself widely from that attitude of mere aloofness exhibited by a nation which declines to join a struggle in which others may be engaged, Swiss neutrality is an essential element of the country's governmental existence and is intended by the nature and sanctions of its origin to be as permanent as the nation itself. Such an aspect of neutrality is termed neutralization; though in origin quite dissimilar to that of Switzerland, this international quality was also characteristic, at the outbreak of the present war in 1914, of Belgium and Luxemburg, as well as of a variety of smaller governmental entities or adjuncts.

We may, perhaps, assign a beginning to Switzerland's neutral existence by dating it from the permanent peace between Switzerland and France concluded at Freiburg, November 12, 1516, since from this date Switzerland, considered as a homogeneous federal alliance, did not again take any direct part in warlike activities, as it had done in the Milan campaign undertaken for the purpose of driving France from northern Italy and which had culminated in the battle at Marignano September 14, 1515. On May 5, 1521, an offensive and defensive alliance was made with France and renewed in 1663, 1715, and 1777. On the latter occasion Swiss neutrality was expressly guaranteed by France.

Again, the conclusion of the celebrated treaties at Münster and Osnabrück in 1648, and known as the Peace of Westphalia, furnishes another landmark in Switzerland's neutral development; it here definitely parted company from the Empire and attempted to introduce into its neutral attitude the principle that thereafter no Swiss territory should be open to the transit of a foreign army, although the associated German-speaking Cantons, then known as *Orte*, thought it no impairment of neutral principles for their several state governments to furnish mercenary contingents to the various armies of Europe, a practice, in fact, continued far into the nineteenth century.

During the years following the Peace of Westphalia, the Swiss states, by way of defining and strengthening their neutral attitude, determined to affirm their position against possible aggression, and on March 18, 1668, executed, though not for the first time, a document known as *Defensional*, by which the various *Orte* and their allies became mutually obliged to furnish certain armed contingents for territorial protection, thus making the important principle of armed neutrality (*Wehrverfassung*) a permanent element of their constitutional frame work.

Switzerland's neutrality was now and for long years afterward almost continuously threatened, both on the part of France and the Empire, and doubtless the ambitions and activities of these powerful neighbors did much toward developing Swiss conceptions of a fundamentally neutral state as furnishing the only certain condition of continuity in that allied existence through which the Swiss pastoral and agricultural communities could realize their ideals of freedom and independence.

Coming now to the practical initiation of Swiss neutrality in its present-day aspects, we note, in the first place, the treaty with France of 1777, concluded under pressure of threatened Austrian aggression and whose tragic issue was seen in the memorable defense of the Tuileries at Paris by the Swiss Guard on August 10, 1792. It was, however, from the Revolution itself that Swiss progress really takes its rise. With the French invasion of Canton Vaud, in 1798, there begins a long series of constructive constitutional activity, a view of whose various steps is indispensable if we are to rightly understand

Swiss conceptions of neutrality as an influence finding its mainspring in the beginning of a new order which produced in the end a democratic federal state and gave the country the international position cherished by all Swiss as a possession of first importance.

At the outbreak of the French Revolution Switzerland found itself united in an alliance (*Bund*) of thirteen communities (*Orte*). The thirteen allies were surrounded by an extensive territorial agglomeration of districts and towns which were in turn allied (*zugewandte, verbündete*) with the thirteen, but in quite various fashion. These latter allies were divided into two classes somewhat analogous to the *socii* and *confoederati* in the ancient Roman world; nor were their treaties made with the Swiss Alliance as a whole, but, for the most part, with individual Cantons or groups of Cantons, and their rights varied according to the possession on their part of a vote in the general federal assembly at Zurich or the absence of such a privilege. Of less consideration still were merely protected districts (*schutzverwandte*); examples of such were the District of Gersau on Lake Lucerne, the town of Rapperschwyl, lying along the Lake of Zurich, and the more extensive territory of Engelberg amid the high Alps of Unterwalden and Uri. The principal allies in this complex plan claimed rule, again, over a great number of strictly subject territories, termed *gemeine Herrschaften*, without right of representation in the great federal council, and administered by officials (*Vogte*) with few ideas of freedom or equal rights.

From such a condition, nothing, perhaps, short of the fires and stress of the Revolution and the Napoleonic conquests, could have freed the country and initiated the highly organized and truly democratic political framework of today which exhibits in such striking form the principles of democratic free government. Swiss neutrality, it will be seen, is in fact a political creation springing from very unusual necessities, and slowly working out a plan of union and independence under the inspiration of the spirit of freedom. Switzerland is limited in territory and lacks the wealth of states more richly dowered by nature; hence the Swiss political consciousness readily grasped the need of assured protection from outside aggression, if it were to be permitted to place its public institutions on a firm foundation. This con-

ception of its destiny furnishes a key to the somewhat tangled scheme of events and negotiations which are found leading up to the finished product of a neutralized condition which must furnish, if the principles of civilization are to be maintained, a measure of perpetuity to Swiss institutions.

The leading documents in the history of the formation of present-day Swiss neutrality are to be found, first, in the series of constitutional instruments by virtue of which Switzerland emerged from its ancient and very loosely constructed federal condition and became, at the Congress of Vienna, a definitely established constitutional federation of communities enjoying equal political privileges as well as independence; and, second, in the numerous treaties, protocols, and declarations of diplomatic character by means of which the conception of a permanent neutrality or neutralization was slowly evolved. For the purpose of the present article, it will doubtless be simpler and perhaps clearer to consider these two source-currents together, rather than separately, since their interdependence furnishes the true key to their significance and aim.

No sooner had the French arms secured a practical guardianship of Switzerland on the part of France in the opening weeks of 1798, than the French commissioner Lecarlier announced, under date of March 28, an official interpretation from his headquarters at Bern of the new Helvetic constitution which, on April 12 following and with modifications introduced by the hand of Napoleon himself, was imposed upon the country. In its first title this highly unitary constitution proclaims that "There are no longer frontiers between the Cantons and the subject districts nor between the Cantons themselves. The unity of fatherland and interest succeed for the future to the feeble bond which joined by chance, as it were, many heterogeneous districts unequal and subjected to domestic differences. Heretofore there existed feebleness; in the future there shall be a strength which is the strength of all." While this constitutional attempt did not prove a success, it nevertheless introduced an effective blotting out of political inequalities, and in its conception of an executive modeled after the French Directory and collective in form, its influence is apparent in the formation of the present Swiss Federal Executive Council of seven

members. On August 19, 1798, there was also concluded a treaty of alliance with France, Article 3 of which guarantees on the part of France the independence and unity of the new Helvetic Republic.

This principle of the guarantee reappears in the celebrated treaty made at Lunéville between the Empire and France February 9, 1801, Article XI of which declares that the high contracting parties mutually guarantee the independence of the Helvetic and other republics which had issued from Napoleonic conquests. The failure, however, of so violent a change in Swiss political affairs as was contemplated by the Helvetic constitution made necessary a recourse to some other form of government, and on September 30, 1802, Napoleon, First Consul, issued a proclamation from the palace of St. Cloud summoning the Swiss to prepare to take part in a new constitutional plan to be proposed by himself as mediator. This mediation constitution was prepared as part of a most elaborate document, which also contained in complete form the new constitutions of the nineteen cantons into which Switzerland was now divided; the instrument bore date of February 19, 1803, and was accompanied by a new treaty of defensive alliance with France under date of September 7 in the same year, the second article of which pledges France to defend Swiss neutrality as against other Powers when summoned so to do by the Swiss Diet. Switzerland had, of course, merely reverted to its former condition of practical vassalage while being independent in name only, and no time accordingly was lost by the Swiss central government, when, after the battle of Leipzig in October, 1813, the allied forces moved toward the Swiss frontier, in asserting a neutrality as against both the allies and Napoleon. It was well understood, however, that this could not be defended, nor was it consonant to Swiss interests to maintain it against the *allies*, since they came as the true liberators from French domination. Thus it was that the allied armies entered Switzerland peacefully at Basel and were welcomed everywhere, especially at Geneva, which was now seen to be about to pass from French possession to membership in the Swiss Alliance.

On December 29, 1813, the Swiss allied council (*Tagsatzung*), sitting at Zurich, passed the famous resolution (*Übereinkunft*) repudiating the mediation constitution and pledging itself to the formation of a

new alliance in the spirit of ancient Switzerland (*im Geiste der alten Bunde*). Such an act was in fact a declaration that the Diet possessed constituent as well as legislative capacity; nor did any opposition to such a character long maintain itself; it was this assembly, reinforced later by the delegates of temporarily recalcitrant Cantons which, known as the Long Assembly, finally produced, under pressure of the Powers, the Swiss federal constitution of August 7, 1815, under which the country lived until the adoption in 1848 of the form of government continued, with various amendments, to the present day. The second article of the federal instrument of 1815 provides for cantonal contingent troops for the maintenance of the neutrality of the country, which had just been, as we shall see in a moment, recognized by the Powers at Vienna.

For the obtainment at Vienna of certain definite aspirations, the Swiss had already made careful preparation when the allied sovereigns met at Basel in December, 1813. Of the delegates from the Diet and various Cantons, the Genevan Pictet de Rochemont was easily the most gifted, and it proved fortunate for his Canton and for Switzerland itself that he found sufficient favor with the Russians to be appointed Secretary-General to the Baron de Stein, becoming in consequence of this a member of the Russian Council of State. This brought him into immediate relation with the various chancelleries when the allied Powers met again at Paris in the following spring. It was not, however, without a persistent struggle on the part of de Rochemont and his colleagues that Switzerland there obtained an adequate hearing. Nevertheless, when, on May 30, 1814, France concluded identical treaties with Austria, Great Britain, Portugal, Prussia, Russia, and Sweden and Norway (the several treaties being collectively known as the first Peace of Paris), Switzerland was able to obtain in Article I, paragraph 7, the union of Geneva with Switzerland, and in Article VI, a recognition of Swiss independence; while Article II of the separate and secret articles of the Austrian treaty contained the important clause: "France will recognize and guarantee conjointly with the allied Powers and in like manner as they do the political organization which Switzerland will give itself under the auspices of the said Powers and on the bases agreed upon with them." It is precisely here that

we have the practical documentary foundation of Switzerland's present international position. In addition to this forecast of a neutral guarantee, de Rochemont succeeded in obtaining, in Article IV of the Austrian treaty, the consent of France to a practical neutralization of the great highway then running from Geneva along the westerly side of the lake through French territory to Canton Vaud. It remained to secure at a later date a cession of this territory itself in order to place Geneva in direct territorial affiliation with the remainder of the Swiss country.

The opening of the Congress at Vienna in the following November found various Swiss delegates prepared to press the aims of their several Cantons as well as of the Diet at Zurich. On the part of the Diet the points of importance were: (1) a recognition of Switzerland as an independent state; (2) the assertion of its neutrality and the attainment of an adequate military frontier; (3) the possession as Swiss federal territory of the wide-lying lands of the bishopric of Basel; (4) the addition to Geneva of an adequate territory; (5) the reunion of the city of Constance with Switzerland; (6) the return of the beautiful Val Tellina on the southerly side of the Alps; (7) indemnity for the seizure by Austria and the Grand Duchy of Baden of sundry Swiss ecclesiastical foundations. As events turned out, Switzerland was destined to obtain the majority of these demands, though it failed to secure either Constance or the Val Tellina. Nevertheless, the bishopric of Basel eventually became Swiss, the most part of it going to Canton Bern while smaller portions were assigned to Neuchâtel and Canton Basel itself. The three French-speaking Cantons of Neuchâtel, Geneva, and Valais were united with the Swiss alliance, thus completing the number of twenty-two Cantons as they stand to-day and affording, from a territorial point of view, a strong military frontier.

On March 20, 1815, the Vienna Congress undertook to formulate in a Declaration the chief points to be conceded to Swiss needs, this Declaration afterwards taking shape as Annex No. 11 of the Final Act of the Congress June 9, 1815. The preamble to the Declaration announces that the Congress,

After having obtained all information possible touching the interests of the different Cantons and having taken into consideration the demands of the Helvetic delegation, declares that as soon as the Swiss Diet shall have acceded in due form to the stipulations set forth in the present document, there shall be prepared a formal statement setting forth the recognition and guarantee on the part of all the Powers of Switzerland's perpetual neutrality within its new frontiers and which statement shall be held to complete arrangements of the Congress as contemplated in the Treaty of Paris of May 30, 1814.

For the moment we pass by the details of this important document, since our attention is more especially engaged with the neutrality feature. On May 27 following, the Swiss Assembly at Zurich declared its formal adhesion to the allied plan:

The Diet accedes in the name of the Swiss Confederation to the declaration of the Powers assembled at the Congress of Vienna under date of the 20th March 1815, and promises that the stipulations contained in the "Transaction" inserted in this Act shall be faithfully and religiously observed.

No. 2. The Diet expresses the eternal gratitude of the Swiss nation towards the high Powers who by the above declaration assigned to them with a boundary far more advantageous its ancient important frontiers; unite three new Cantons to the Confederation; and promise solemnly to acknowledge and guarantee the perpetual neutrality of the Helvetic Body as being necessary to the general interest of Europe. The Diet feels the same sentiments of gratitude for the uniform kindness with which the august Sovereigns have exerted themselves in bringing about a reconciliation of the differences which have arisen between the Cantons.

Accordingly, the Vienna Congress Act of June 9, 1815 (the Vienna Final Act), contained the following stipulation in Article 84:

The Declaration of the 20th March, addressed by the Allied Powers who signed the Treaty of Paris, to the Diet of the Swiss Confederation, and accepted by the Diet through the Act of Adhesion of the 27th May, is confirmed in the whole of its tenor; and the principles established, as also the arrangements agreed upon, in the said declaration shall invariably be maintained.

Thus the principle of a Swiss permanent neutrality received the approval and guarantee of the Powers.

When, in the autumn following the battle of Waterloo, the Powers

once more came together at Paris, a protocol was executed under date of November 3, 1815, by Austria, Great Britain, Prussia, and Russia in order to confirm the dispositions of the Vienna Congress touching Switzerland, and these dispositions with others were made part of the second Treaty of Paris, concluded on the twentieth of the same month; as an annex to these identical treaties there was signed on the same day on the part of Austria, France, Great Britain, Portugal, Russia, and Prussia a declaration of the recognition and guarantee of Swiss perpetual neutrality and the inviolability of its territory:

The accession of Switzerland to the Vienna Declaration on March 20, 1815, on the part of the signatory Powers of the Treaty of Paris having been duly notified to the ministries of the Imperial and Royal courts by the Swiss Act of May 27 following, there remains no obstacle to the making of an act of recognition and guarantee of perpetual neutrality of Switzerland in its new frontiers in conformity with that declaration. . . . Accordingly the signatory Powers of the Vienna Declaration hereby set forth in the present act a formal and authentic recognition of Swiss perpetual neutrality and guarantee the integrity and inviolability of its territory within its new limits as settled not only by the Congress of Vienna but also by the Treaty of Paris of this date and as they are intended to remain in conformity with the protocol of November 3, hereby annexed, which contemplates in favor of Switzerland a fresh addition of territory to Canton Geneva to be taken from Savoy. . . . The Powers signatory to the Declaration of March 20 authoritatively recognize by the present act that Swiss neutrality and inviolability and independence of any foreign influence are to be considered as in the true interest of European policy. The Powers further declare that no conclusion unfavorable to Swiss rights as touching its neutrality or the inviolability of its territory can, or should be, drawn from the passage of the allied troops over Swiss soil. . . . The Powers take pleasure in recognizing that Swiss conduct under these circumstances of stress have shown that it knew how to submit to sacrifices in the interest of the general welfare and in the maintenance of a cause defended by all the Powers of Europe; and that, finally, Switzerland was worthy to obtain the advantages now assured to it as well by the arrangements of the Congress of Vienna as by the Treaty of Paris and by this present Act to which every European Power is invited to accede.

Thus Switzerland was clothed with a distinctive international personality and assumed a place amid other nations of equal independence, though supported by solemn guarantees. Such a position,

however, presents, in its development, many features of importance. An account of these must be reserved for another occasion.¹

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¹ Authorities: *Recueil International des Traités du XIX^e Siècle* (Descamps et Renault), tome premier, 1801-1825; *La Suisse, Étude Géographique Démographique, Politique, Économique et Historique*; *Geschichte der schweizerischen Politik* (Professor Schollenberger, of Zurich); *Au Congrès de Vienne*, Journal de Jean-Gabriel Eynard (ed. by Édouard Chapuisat); *La Suisse au Dix-Neuvième Siècle* (ed. by Professor Seippel of Zurich); *Geschichte und Texte der Bundesverfassungen der schweizerischen Eidgenossenschaft* (S. Kaiser u. J. Stricker); *Die Bundesverfassungen der schweizerischen Eidgenossenschaft* (Professor Hilty); *La Suisse et les Traités de 1815* (É. Chapuisat); *Notre Neutralité*, (Lucien Cramer); *La Vérité sur la Neutralité de la Savoie du Nord* (F. Marullaz); *La Vérité sur la Zone Franche de la Haute-Savoie* (F. Marullaz); *Les Zones Franche de la Haute-Savoie et du Pays de Gex* (Henri de Grix); *Das Bundesstaatsrecht der Schweiz* (Professor Schollenberger); *Les Conséquences Juridiques de la Guerre en Suisse* (E. Kuhn, of Zurich; éd. Française par H. Bonnard et P. Secretan); *Die Neutralität der Schweiz* (Professor Hilty).

THE PRUSSIAN THEORY OF THE STATE

SINCE the outbreak of the Great War in the summer of 1914 the conviction has deepened that whatever may have been the conflict of interests between the nations of Europe due to their efforts to maintain or increase their political influence and territorial extent, this calamitous struggle would not have been precipitated, and certainly England and the United States would not have felt forced to become parties to it, had there not existed in Germany a controlling political philosophy which marked her off from other States and made her a menace to the rest of humanity. It is true that the proximate cause that brought Great Britain into the war was the invasion of Belgium by the German army, which jeopardized her own security from invasion; and it is equally true that it was the disregard by Germany of our own commercial rights as a neutral nation that was the immediate cause of our own declaration of war. But back of these proximate or immediate causes was a real efficient cause which impelled both Great Britain and the United States to enter the contest and to pledge to its successful prosecution their entire manhood and material resources.

This real and efficient cause was this conviction of which I have spoken,—a conviction which has strengthened as Germany has continued to reveal herself in her methods of warfare, and to demonstrate that her political ideals and standards of conduct are such as, if unrestrained in their application, would render impossible a comity of life and a reciprocal friendliness and coöperation among the nations of the world.

The present great struggle is, therefore, properly termed a world war, not merely because a large number of nations are parties to it, but because, in their essential character, its issues are of vital importance to all the civilized peoples of the world. In other words, these

aims transcend special national interests and concern the spiritual as well as the material interests of all humanity.

This interpretation of the significance of the war is one with which we are all familiar, and I would perhaps not be justified in again explaining its implications, except for the fact that it is my hope that I can show in a somewhat more systematic manner than is ordinarily shown the premises upon which the maleficent German political philosophy rests, and exhibit the manner in which its several parts and conclusions are knit together into a logical whole.

In carrying out this purpose it is not my intention to review the acts of which Germany has been guilty,—acts which cry aloud the infamy of those who have authorized them, and, I may add, of those in other countries, including our own, who have attempted to excuse them. But it will be my effort to show that the reasons which have been brought forth to justify them have been drawn from a political philosophy whose premises support, as, by the Germans, they have been made to support, acts which the rest of the civilized world has deemed inconsistent with national honor and the demands of justice and humanity.

I shall first set out the postulates of this false political philosophy and then attempt to show how it has been possible to obtain for them the acceptance and support of an educated, and, outside of political life, a moralized people. It is further necessary to say that in this paper I shall be concerned only with the Prussian conception of the State. With the Teutonic doctrines of government, which will include a consideration of German theories of constitutional law and political liberty, I shall deal in my second paper.¹

Considering first, then, the postulates of the ruling German political philosophy, we find placed in the forefront the conception of the State as an entity of such an exalted superpersonal and mystical character as to warrant the attribution to it of divine qualities.

At all times since first men began to speculate regarding the nature of the institutions to whose controlling authority they have found themselves subjected, the idea of divinity has played an important part. Among primitive and uncivilized peoples all rules of conduct, whether

¹ Printed *infra*, p. 266.

of law or custom, obedience to which was socially demanded, were regarded as divinely decreed. Among many Oriental nations to this day a view substantially similar prevails. And among not only these peoples but those of Europe and of England the doctrine was for long asserted and widely held until comparatively recent times that the persons who hold the reins of supreme political power were, if not themselves Gods, at least the vicegerents of God. And in the political philosophy of Democracy, also, the divine element has not been wholly absent, the doctrine being frequently declared that the voice of God is to be heard speaking in the voice of the people when authentically expressed — *vox populi, vox Dei*.

That, however, which distinguishes this State doctrine of German political philosophy from these other divine-right theories is that it is supported by abstract and metaphysical, rather than by theological or dogmatic, principles, and that the divine or superpersonal characteristics which are dealt with are ascribed not to the government, nor, primarily at least, to its rulers, but to that abstract and mystical entity which is termed the State, and which is conceived of as employing the government and its rulers as but instrumentalities for carrying out its ends.

In juristic philosophy it has been found convenient in all countries, in order to give formal and logical consistency to their systems of public law, to envisage or picture the State as a political person or corporation possessing and uttering a legally supreme will, and thus, in a formal and purely juristic sense, as the ultimate source of all commands that may, in technical strictness, be termed laws. But this conception, which is nothing more than a convenience of thought, and which serves only as a peg upon which to hang other juristic concepts, or as a starting point from which to attempt a logical arrangement of public-law principles, is an idea wholly different from the German doctrine which postulates the real, albeit mystical and insubstantial, existence of a State-being to the commands of which, as a moral proposition, implicit obedience is due, and with ends of its own for the realization of which any and every sacrifice of individual well-being may rightfully be required.

Professor John Dewey, in his work, *German Philosophy and*

Politics, has shown in a convincing manner that the formalistic and purely abstract character of Kant's doctrine of the categorical imperative makes easily possible, if it does not actually encourage, the filling in of its contents by the apodictic commands of a superpersonal State, and the justifying of any acts which are deemed to advance the interests or ends of this mystical being.

That Kant went even further than this and himself argued the existence and mystical character of the State as a being raised above the plane of ordinary human existence and above the realm of the practical, if not of the pure, reason, is shown by his statement that "the origin of the supreme [political] power, from the practical point of view is inscrutable by the people who are under its authority." In other words, he continues, "the subject should not reason too curiously as to its origin, as if the right of obedience due to it were to be doubted."² Again, of the will of this State he says:

A law which is so holy and inviolable that it is practically a crime even to cast doubt upon it, or to suspend its operation even for a moment, is represented of itself as necessarily derived from some supreme, unblamable lawgiver. And this is the meaning of the maxim "All authority is from God"; which proposition does not express the historical foundation of the civil constitution, but an ideal of the practical reason. It may be otherwise rendered thus: "It is a duty to obey the law of the existing legislative power, be its origin what it may." Hence it follows that the supreme power in the State has only rights and no (compulsory) duties towards the subject.³

Elsewhere Kant goes so far as to see in the State a unity resulting from a trinity of powers which is obviously patterned after the triune character of the Christian God.⁴

In the philosophy of Hegel, also, we find the State appearing as a transcendental being, essentially divine in character. "The State is the march of God in the world; its ground or cause is the power of reason realizing itself as will. When thinking of the idea of the State, we must not have in our mind any particular State, or par-

² *Philosophy of Law*, 174, Hastie translation.

³ *Op. cit.*, 174.

⁴ Cf. Duguit, *The Law and the State*, translation 46.

ticular institution, but must rather contemplate the idea, this actual God, by itself."⁵

As thus conceived, it is what we would expect when we find the State declared by Hegel to be morally supreme and able to transmute into duties to itself whatever rights might seem to belong to its subjects as individual human beings. "This substantive unity [of the State]," he says, "is its own motive and absolute end. This end has the highest right over the individual, whose highest duty in turn is to be a member of the State."⁶ The State is indeed the reality of the moral idea — "*Der Staat ist die Wirklichkeit der sittlichen Idee.*"

The extent to which German thought, social and political as well as metaphysical, has been guided by the doctrines of Kant and Hegel is a fact which is commonplace in the history of thought. It would, therefore, be unnecessary, even could space be spared, to show how, throughout German literature of the nineteenth century, the doctrines which have been here indicated were constantly restated and reaffirmed. Especially, however, since the outbreak of the present war have they been put forth with renewed emphasis and ardor.

We may, then, take it as a proposition regarding which there can be no dispute that German political philosophy, as academically taught and as popularly believed, asserts that every independent politically organized group can, and should, be viewed as constituting the material and phenomenal body of a mystical and inherently divine being whose will, when authentically expressed, may not be morally or legally questioned by those over whom it claims authority. In short, the old doctrine of the divine right of the ruler is replaced by the divine right of the State.

The next step in the German political philosophy is to draw the conclusions which logically follow from the premise of the Godhead of the State. Two corollaries immediately follow. The first of these is the one already indicated that, as transcendently supreme, no limits may be set to its authority—no resistance to its commands in reason, justified. This it is to be again emphasized is not the ascription to the State of a legal supremacy and absoluteness such as is predicated

⁵ *Philosophy of Right*, Dyde translation, 247.

⁶ *Op. cit.*, 240.

by the analytical jurist, but its endowment with a will whose commands may not be morally questioned. The second corollary drawn is that the State exists as a being that has interests and ends of its own that are distinct from those of its subjects whether collectively or distributively viewed. This is a doctrine which, to be understood, needs some explanation.

It is commonly believed by all except the most extreme individualists that men can not realize their potentialities as rational and moral beings, except in societies politically organized. By some it is held that it would not be possible for the individual even to form the ideas of right and wrong and to conceive of himself as a being with moral rights and duties if he were not brought into union with others of his own kind. It is furthermore generally admitted that regard by individuals for the welfare of others furnishes the essential basis of morality, and that, therefore, the best good of the individual must be stated in social terms. It thus becomes right and, indeed, morally obligatory, that the individual should seek the good of the community, and, through it, the welfare of all humanity, regard for the future as well as for present generations being had. But though thus necessarily given a social content it remains true that the individual, as a rational and moral being, strives for what he conceives to be his own individual best good. Though stated in social terms, the general welfare which he feels himself morally impelled to seek is the welfare of other individuals of the same nature as himself. It is only in the German political philosophy that he is taught to have in view the welfare of a mystical entity to which a divine character is ascribed, and which is conceived of as demanding support as an end in itself. In all other Western systems of moral and political philosophy, the maintenance of the State ever exists as but a means whereby the welfare of the political group or of all humanity may be advanced.

Even when the German political philosopher so far descends from the peaks of pure reason as to consider political rule as a means of promoting human welfare, he takes care to preserve for it an absolute character. A certain form of it, namely as a national State, is declared to be the only perfect type, and as thus manifested to men it is affirmed to be the indispensable means, the only rationally conceivable means,

by which humanity may reach the ends which reason holds out to men as desirable of attainment. So strongly is this absolute doctrine stated that we find it asserted that it would be against reason and right to seek to substitute a World-State in place of a number of disparate national States. Even the establishment of institutions or rules that would place a restraint upon the freedom of action of these independent state persons in the international field, it is declared, would be in violation of their intrinsic rights. "The establishment of an international court of arbitration as a permanent institution," Treitschke declares, "is irreconcilable with the nature of the State." Not, it will be observed, because of results to which it might lead, but because it is irreconcilable with the inherent nature of the independent national State as he conceives it to be. In another place he declares that it is only when the State is given the opportunity to contest with other States and to impose its will upon theirs that the opportunity is offered, the *milieu* provided, for the realization by the State of the destiny which its inherent nature points out.

From doctrines such as these it is but a short step to the laudation of war as an instrument or means divinely intended, whereby the relative worth of States, standing in essential opposition and antagonism to one another, may be demonstrated. War furnishes the test, and its result is declared to vindicate the superior right of the victor to existence—the event makes reason and right manifest. Kant, indeed, sought for a means whereby international peace might be made perpetual, but this aspiration found no response in Hegel or his school, and was repudiated with scorn by later political philosophers of Germany. "The Living God," says Treitschke, "will take care that war shall always return." "The ideal of perpetual peace is not only impossible but immoral as well," he says in another place. "Ye shall love peace as a means to new wars," said Nietzsche. "War is the noblest and holiest expression of human activity" was the doctrine declared to the youth of Germany in the official organ of the Young Germany (*Jung-Deutschland*). "Were disputes between States to be determined by a court and by compulsion exercised by superior power," said Lasson as far back as 1868, "all the States subjected to such a court would cease to be States. . . . Separate States are by

nature in a state of war with each other. Conflict must be regarded as the essence of their relations and as the rule, friendship as accidental and exceptional."

If this be the relation in which States, as determined by their very nature, must and should stand towards each other, it is not strange that it should be taught that power, physical might, is the chief end for the possession of which in the greatest possible amount the State should strive. The Nietzschean influence is here apparent, and indeed his doctrine of "will to power" is found throughout German ethical and political writings. "The State is power" springs constantly from the mouth of Treitschke. "The injunction to assert itself," he declares, "remains always absolute. Weakness must always be condemned as the most disastrous and despicable of crimes, the unforgivable sin of politics" — the sin against the Holy Ghost.

From premises such as these the rights of small states find short shrift, and the morally obligatory character of international customs sanctioned by age and general agreement is disposed of without difficulty. The most solemnly plighted national word remains binding only so long as expediency dictates. Cruelties too terrible to be described receive complete justification if ordered by the State, even if there appear no commensurable justification for them upon the ground of practical expediency. The *sic volo, sic jubeo* of the State is sufficient. Indeed, as soon as one has to deal with the welfare of a being deemed divine in character, a measuring of means according to the end to be realized becomes no longer applicable. And thus, when we read of the rapine and devastation committed by the German armies of occupation from which, at the most, only slight and ultimate advantage could possibly accrue to the German State, one is reminded of the statement of Cardinal Newman in his *Apologia* that it were better that the whole world should pass away and all the living beings upon it perish in unutterable misery, than that a single sin against God should remain unrepented for and unforgiven.

In broad outlines this is the theory of the State that is today dominant in Germany. The evidence for its existence is implicit in the deeds that have been committed and explicit in the writings of Germany's leading publicists, historians, moralists, theologues and the

utterances of her public men. And yet, because of its mystical and abstract character, and because of its atrocious implications, it is not strange that we should hesitate to believe that an intellectually enlightened people could possibly have become indoctrinated with it, and their views regarding political matters perverted by it. How it has been possible to accomplish this result, in appearance so difficult, it will now be my task to show.

The first proposition from which we must start is that the philosophy which has made Germany a pariah among nations is not only political in nature, but political in its origin and propagation.

It is not a matter for surprise that there should be differences in national ideals when different States are in different stages of social and industrial development, or when their peoples give assent to different religions, or for one reason or another have adopted different interpretations of the nature and meaning of human existence. I have recently had the opportunity in China of studying and observing the ideals and practices of a people who are still in the agricultural as distinguished from the industrial and commercial stage of economic life, and who accept a religious and ethical philosophy fundamentally different from our own; and, examined in the light of these determining facts, it has not seemed strange that certain standards of personal conduct in China should not be the same as those of the Christianized and industrialized western world, and that the hierarchical arrangement of the virtues should be different from that with which we are familiar. But when we find a people of a country like Prussia, and the other middle European peoples so far as they have submitted to Prussian influence, avowing belief in, and practicing doctrines which shock the consciences of all the other peoples of the civilized world who are in substantially the same stage of industrial and commercial development, and who accept the same religion, and in private life are guided by the same rules of morality, we are confronted with a situation that demands an explanation. Explanation there must be, for it is scarcely conceivable that such a remarkable condition of affairs could have come into existence in a purely fortuitous manner.

Inasmuch, now, as we are unable to find this explanation in a ruling metaphysics, or a distinctive religion, or a system of personal morals,

or a social order, or a stage of economic life which is peculiar and distinguishing, but do find in operation a system of government founded upon constitutional and political principles radically different from those which find acceptance and application in England, France, Belgium, Italy and the United States, then a strong presumption is necessarily raised that here is to be found the explanation which we seek. And this presumption is still further strengthened when we find that the Prussian Government is one which denies to its own people the right to determine their own political destinies; which asserts that, as a practical proposition, it is not within the competence of the popular will of even an intellectually enlightened people to form intelligent judgments regarding matters of public policy unless guided and controlled by those in political authority; and when we further find that the machinery of government is so organized and operated that it has the organs or instrumentalities through which it is able to create and mold public opinion; when, in other words, we find the clergy subjected to strong governmental influence, education from the primary school to the university practically monopolized by the State, and a system of military service maintained that brings almost the entire body of youths of the country under complete and rigid governmental control at the very period of their lives when their ideals are most susceptible to outside formative influences; and, finally, when we find it frankly avowed that it is within the legitimate sphere of public authority that the press should be controlled and employed as an agency for spreading doctrines favored by those in political authority and for discrediting doctrines which are not favored, — when, I say, we find all these political conditions it no longer appears strange that those in control of the machinery of government should have been able, by reiterated action extending over several generations of time, to spread among a people and secure the acceptance of doctrines which, however false, are surfaced over with a transcendental and pseudo-philosophical character, which appeal to patriotism upon the emotional side, and which furthermore make a direct bid to sordid and selfish interests by justifying every action which will tend to increase the political power and material prosperity of the community.

Let me here quote from one who speaks with knowledge. In the recent work to which I have earlier referred, Professor Dewey says:

Germany is the modern State which provides the greatest facilities for general ideas to take effect through social inculcation. Its system of education is adapted to that end. High schools and universities in Germany are really, not just nominally, under the control of the State and part of the State life. In spite of freedom of academic instruction, when once a teacher is installed in office, the political authorities have always taken a hand, at critical junctures, in determining the selection of teachers in subjects that had a direct bearing upon political policies. Moreover, one of the chief functions of the universities is the preparation of State officials. Legislative activity is distinctly subordinate to that of administration conducted by a trained civil service, or, if you please, bureaucracy. Membership in this bureaucracy is dependent upon university training. Philosophy, both directly and indirectly, plays an unusually large rôle in the training. The faculty of law does not chiefly aim at the preparation of practicing lawyers. Philosophies of jurisprudence are essential parts of the law teaching, and every one of the classic philosophers took a hand in writing a philosophy of Law and of the State. Moreover, in the theological faculties, which are also organic parts of State-controlled institutions, the theology and higher criticism of Protestant Germany have been developed, and developed also in close connection with philosophical systems — like those of Kant, Schleiermacher, and Hegel. In short, the educational and administrative agencies of Germany provide ready-made channels through which philosophic ideas may flow on their way to practical affairs.⁷

It can not be denied, then, that in Germany there exist governmental agencies fully competent to indoctrinate the people with any philosophy which those in political authority may sincerely hold, or may, for purposes of their own, desire that the people generally should hold. That the powers thus possessed have been employed for this purpose in every conceivable way is well known. Promises and rewards in the nature of political or academic preferment have been offered, titles and other marks of social distinction have been granted in almost countless number and variety, and threats and punishment have not been lacking. And it so happens that those in charge of this propaganda have been able, for their purposes, to make use of the

⁷ Philosophy and Politics, p. 15.

ruling metaphysical and moral philosophies inherited from the close of the eighteenth and the early nineteenth centuries. Some of these philosophies, as for example, of Kant and Fichte and of Nietzsche, have been such as, more or less by chance, to lend themselves to the uses to which they have been put. In other cases, among which the philosophy of Hegel stands preëminent, it seems clear that there was present the deliberate intention to provide the basis for the supreme and supermoral Prussian State. In the writings also of the Prussian school of historians there has been plainly present the purpose to teach a system of political ethics and of political ideals which has found its fruition in the deeds of the last three and a half years.

That the abstract and even metaphysical and certainly mystical doctrines taught by academic teachers should have been able to exercise in Germany the influence they have had in the world of practical affairs has been due to the fact, already referred to, that all the higher servants of the State, military as well as civil, have passed through the national universities, and that in these universities philosophy has played an unusually large part. In addition there would appear to be in the Teutonic mind a predisposition in favor of abstract ideals — a predisposition whether innate or cultivated I do not pretend to say, but certainly present, as German writers themselves are proud to assert. One of the most interesting books called out by the war is one published under the title, *Deutschland und der Weltkrieg*, and translated and issued in this country under the title, *Modern Germany in Relation to the Great War*. This volume is a collection of essays by eminent German university professors in which the sincere and, I am convinced, not unsuccessful, attempt has been made to set out in an objective manner the ideals and convictions of the learned classes in Germany. In an essay entitled "The Spirit of German Kultur," by Professor Ernst Troeltsch, of the University of Berlin, the author, with reference to this mystical or metaphysical *Tendenz* in Germany, speaks of "the German metaphysical and religious spirit." "Our sense of order," he says, "is not founded on its usefulness for material and social ends, but emanates, together with the sense of duty, from an ideal conception of the spirit which is the rule and law of human life and of the universe. . . . The German is by nature a metaphysi-

cian who ponders and strives, from the spiritual inwardness of the universe, to grasp the inner meaning of the world and of things, of man and destiny. It will always be idle to explain the origin and development of this predominant, though by no means universal, characteristic. It remains the final German life secret."

And later on in the same paragraph he says:

The Anglo-Saxon freedom of conscience and disestablishment of the churches encounters difficulties, not alone in historical, political and legal conditions, but likewise in the depths of the German spirit itself, to which the Puritanic separation of politico-social institutions and purely individual culture is foreign. We regard [the] State and spirit as belonging together, and an old inherited instinct makes us avoid a separation in the interest of both, despite the difficulties created by the modern cleavage.

"A similar metaphysical tendency," he adds, "though naturally less closely connected with the State, holds sway in German art."

Upon a statement such as this, alone, one could rest the claim that the Germans are predisposed to a political mysticism, and open to the acceptance of the divine right theory of their State.

The last question which I wish to consider is whether it is right or enduring that the other nations of the world should tolerate or enter into even formal international relations of comity with a people holding such a doctrine of the State as I have described. To this the answer must be no!

The rightful scope of tolerance in matters of deed as well as of thought should be broadly defined and observed, especially by those peoples who have placed liberty of nations as well as liberty of individuals high among their ideals. And, were the influence and attempted application of the perverted political principles which we have been considering confined within the territorial limits of the State whose rulers and subjects accepted them, it might be possible for the peoples of the rest of the world to maintain a position, not of indifference, or of intellectual neutrality, but of noninterference, confining their action to quarantine precautions against infection. But when, as is the present case, the world finds itself confronted with a powerful people not only possessing all the means for offensive war, but obsessed

with a paranoic persuasion of their own superexcellence, and convinced, as declared by thousands of voices, that to them has been given by divine Providence the task and duty of spreading their distinctive *Kultur* throughout the world, and asserting that the national State which they have created, and which may select its own means, is the instrumentality for realizing this end — when this is the condition which confronts the world, no opportunity for the practice of tolerance is preserved. The Teutons have themselves denied the principle of toleration and asserted that nations weaker than themselves have no rights that need be respected. *Homo homini lupus*, man the wolf of man, can be discerned upon their banners. The victory is to the nation of the greatest organized military might, and woe to the conquered is their only reply to those who are thus overcome. Let those who would continue to resist the operation of nature's law, they have said, be left only their eyes with which to weep.

This *folie* of grandeur, as the alienists would term it, entertained by the German people is, of course, not a necessary logical deduction from the Prussian theory of the divine or superpersonal national State. But it is undoubtedly one which could not have found such credence if it had not been officially spread by a State which its subjects have been taught to regard as essentially divine in character. To its utterances they ascribe an ex-cathedra character. How otherwise can we explain the manifesto put forth at the beginning of the war, signed by nearly a hundred of their leading scholars, who found no need for argument, but were satisfied to rest their case upon unsupported statements of their government, improbable though they appeared upon their face to be? Their very civilization, or their *Kultur* as they prefer to term it, they regard as a product of the State, and not of the strivings of individual men and women to realize the potentialities given them as rational and moral beings.

When, then, we find these Prussian doctrines of political power given a militant phase, and backed by an enormous military establishment, no alternative is given to the rest of the world but to meet, and, if possible, to stamp them out of existence. This aim does not carry with it a punitive purpose. The purely vindictive or retributive infliction of suffering or of injury in any form can not be ethically de-

fended, although Germany's leading philosopher, Kant, taught the doctrine in its baldest form. But force applied for the purpose of prevention or deterrence, or of making truth and justice manifest, is not only ethically allowed but imperatively called for. Leaving aside, then, all questions of territorial boundaries, or other material national interests, the world will receive no adequate compensation for the enormous sacrifices it has made, unless the final terms of peace are such that, so far as is humanly possible, the claims of justice are satisfied by the payment of indemnities to those who have been wronged, and by the imposition upon the Germans of conditions which will demonstrate to them that theirs is a system of political morality which the civilized world will not tolerate, and which also, it may be hoped, will tend to convince them that theirs is a system of political philosophy which is at once false and opposed to the true interests of themselves as well as of all other peoples.

W. W. WILLOUGHBY.

THE PRUSSIAN THEORY OF GOVERNMENT

POLITICAL scientists make a sharp distinction between the terms "State" and "Government." A State is a group of individuals viewed as a politically organized unit. In the eyes of the law it appears as a corporate being possessing supreme authority and issuing commands in the form of laws addressed to those over whom it claims authority. A Government is the machinery or complexus of organs through which this state-being formulates, expresses, and enforces its will.

In my preceding paper ¹ I dealt wholly with the Prussian conception of the State and had nothing to say regarding Prussian conceptions of Government. In this paper I shall have little to say regarding the Prussian theory of the State and shall devote myself almost wholly to a consideration of the Prussian governmental system. Of this system, however, I shall speak of but one of its features, namely, its strong monarchical character. In result there should appear what justification there is for the demand of the United States and of the Entente Powers for a modification of the Prussian system.

I have referred to the Prussian Government as a strong monarchy. This it is not merely because of the constitutional status of the King as technically determined by Prussian public law, but by reason of the active personal part he is allowed and, indeed, expected, to play in the operation of the government.

As regards his constitutional status, there is a unanimity of opinion on the part of German publicists that he is to be regarded as the fountain and source of all law and of all political authority. The existence of a written constitution is not inconsistent with this theory, for the constitution itself is viewed as the product of the King's will and therefore as containing only self-set limitations which he has the

¹ *Supra*, p. 251.

legal power to annul by an exercise of the same sovereign authority which supported their original establishment. As typical of this view we may cite the following statement of the acknowledged leading commentator on German constitutional law, Dr. Paul Laband. In his *Staatsrecht des deutschen Reichs* he says: "There is no will in the State superior to that of the sovereign, and it is from that will that both the Constitution and laws draw their binding force."

From this principle as a premise, it is held that the part played by the parliament in the law-making process is simply that of expressing an opinion as to what the contents of a law shall be. To the opinion, thus expressed, the King gives legal effect by promulgating it as a law. The real legislative organ is thus declared to be the King. It is by an exercise of his will that the breath of legal life is breathed into the parliamentary propositions that are submitted to him.

The constitutional status thus ascribed to the Prussian King stands in sharp contrast to that given the British or Belgian King, and, it does not need to be said, it is antithetical to that of chief executive in the French and American republics. In a republic the constitutional principle is fundamental that all powers of the government are derived by grant from the people. This premise is not necessarily inconsistent with the idea of monarchy, and, in fact, the doctrine is accepted in the constitutional system of Belgium. Thus the Belgian constitution adopted in 1831 declares that "all powers emanate from the people"; that "they shall be exercised in the manner established by the constitution," and that the executive powers vested in the King shall be "subject to the regulations of the constitution." Contrasted with these provisions of the Belgian constitution is the phraseology of the preamble of the Prussian constitution, which reads: "We, Frederick William, by the Grace of God, King of Prussia, etc., etc., make known, etc."

In Great Britain, if we have regard only to legal theory as distinct from actual practice, the Crown is viewed as the organ of government in which sovereignty inheres. It will be observed that I here use the term "Crown" as the name of an office or organ of the government and not the term "King" or "Monarch"; for, since 1688, the constitutional principle has been established that the people through

their representatives in Parliament may determine who shall be entitled to occupy the throne. Thus King George of England lays no claim to other than a parliamentary title. And, furthermore, it is recognized as a matter of constitutional practice that the representatives of the people may withdraw from the Crown any of the independent or so-called prerogative rights which it still has, and that, even as to the rights still retained, they must in every case, in practice, be exercised at the direction of the King's Ministers, who are held politically responsible to Parliament for the directions which they may give.

In effect, then, so far as the substance is concerned, the Government of Great Britain is as subject to the popular will as are the Governments of the Republics of France and the United States. There are, indeed, not a few who assert that through the operation of her system of cabinet control the British Government is more responsive to the will of the people than is the Government of the United States.

In Italy also the parliamentary system has developed which brings the control of the acts of the King under the control of his Ministers, who are responsible to the elected representatives of the people.

In sharp contrast with what exists in Great Britain or in Belgium and Italy, we find it accepted in Prussia as right and proper that the King should exercise a personal influence that in many matters is decisive. I am here, of course, speaking of the King of Prussia. As *ex officio* German Emperor, he is not vested with independent powers nor supposed to exert a personal control in imperial affairs. This monarchical authority in the Empire is constitutionally possessed by the Bundesrath, which represents the governments of the individual States. But, inasmuch as the voice of the Prussian delegation is, in practice, controlling in the Bundesrath, and this delegation is subject to the control of the King of Prussia, it necessarily follows that the Emperor, exercising his powers as Prussian King, is able to exert a powerful influence in the Imperial Government. In other words, the dissatisfaction in Germany, which at times has been intense, with certain utterances and activities of the present Kaiser has not been because he has exerted a personal influence, but because he has exercised it outside of the channels constitutionally provided.

This relationship in which the King stands to his popularly elected legislative chambers interprets many features of German public life which seem strange to English and American observers. It explains, in the first place, the fact that it is considered a moral and wholly justifiable practice for the King and his personal advisers — “the Government” as they are called — to control, so far as they are able, not only the elections of members to the representative body, but by rewards and other forms of political pressure to influence the votes of the representatives after their election. It explains, furthermore, the policy of the “Government” in playing off one party or faction against another, and thus, through the *bloc* system, obtaining a majority vote in favor of action which the Government desires. It explains also the fact that not even the first steps have been taken in Germany in the development of responsible parliamentary government whether of the English or of the French type. It is indeed recognized by all German publicists that such a system is absolutely incompatible with the German conception of monarchical power.

The monarchical conception in Germany explains, still further, the right which is freely exercised by the “Government” of dissolving the elected chamber whenever other methods of obtaining its support for a government measure have failed; and, it may be said, so powerful is the official influence that may be exerted in the ensuing election that in all cases the result has been that the newly chosen chamber has been of the desired political complexion. Von Bülow, in his *Imperial Germany*, complains that the Germans lack political ability, by which, as he explains, they show a disposition to form a multitude of minor parties based not on broad public principles but upon narrow, particularistic, and personal interests. It would seem, however, that this failure of two or more strong political parties to develop has been due in no small measure to the attitude which the “Government” assumes towards all political parties. The one strong political party — the Social Democrats — which has been formed in German imperial politics, is strong in numbers rather than in influence, and, moreover, occupies a very particular position, for, as Von Bülow frankly says, it has, from the viewpoint of the “Government,” no right to exist. He flatly stigmatizes its members as enemies of the German State — enemies

for the overthrow of whom any means, including force when possible, may rightfully be employed.² As to the reasons why the Social Democrats are held in such peculiar detestation by the "Government," shortly stated, it may be said that it is not so much their legislative program which is disapproved of as it is that their fundamental political doctrines are in conflict with the monarchical conception of the Empire and of Prussia. This is made abundantly clear by reading between the lines of Von Bülow's book.

Finally, it may be said that the monarchical conception in Germany explains the open and avowed measures which are taken by the ruling authorities to control the formation and expression of a popular opinion with regard to matters of public policy. Not only is there kept a strict control over unofficial expressions in the press, as the numerous prosecutions for *lèse majesté* testify, but, and more especially, governmentally inspired articles are constantly published in the leading newspapers in order that the people shall be led to take a favorable view regarding public policies which are approved by the "Government."

In summary, then, we may ask: Just what is the part played, according to Prussian ideas, by the elected representatives of the people in the Diet? Their function is a fourfold one: (1) They constitute an avenue of information through which the "Government" — the King and his advisers — may learn regarding the economic and social conditions of the people and of their desires; (2) they constitute an organ of advice, — that is, the representatives, individually, or through their collective wisdom, give what amounts to advice to those in authority; (3) they criticize the acts of the Government, — bring its acts, or many of them at least, to the bar of public opinion; (4) they have a veto power over the matters enumerated in the constitution. This veto they can exercise by refusing, by a majority vote, to approve legislative propositions laid before them by the King. But, even in this negative sense, it is to be observed that they can not prevent the execution of any laws already enacted by refusing to approve the necessary appropriations. If these appropriations are not made by the chambers, the King is generally conceded to have the constitutional

² These statements are discreetly omitted by the former Chancellor from the second edition of his work issued since the beginning of the war.

right to raise and expend what funds are necessary in order to carry out the laws already upon the statute books. This Prussian theory of the budget is based upon the doctrine that inasmuch as only the will of the King is competent to create law, the Diet can not, by its action, defeat the operation of law.

The function which the chambers perform in the creation of law is thus limited to the vetoing of propositions of new law of which they disapprove. And even as to the new law which is approved by them, the constitutional theory is, as has been said, that the part played by the chambers in its establishment is limited to a participation in the determination of the substance or material content of the law. That which gives legal life and force to this substance is the will of the King as manifested by his promulgation of the project in his name as law. And it does not need to be said that the King is at all times free to refuse to promulgate propositions which have received the assent of the chambers.³

Starting, then, with this explanation of the character of the Prussian monarchy, we may proceed to inquire the rational, that is, the utilitarian or ethical basis upon which it is rested by its supporters. And here, in order to keep our thought clear, it will be necessary to distinguish between the grounds upon which the King founds his personal claim to the throne and the arguments which uphold the institution of monarchy itself as a form of government.

As regards this latter phase of the question it is to be observed, first of all, that the Prussian people have never been given any real opportunity to decide for themselves whether they wish to be monarchically ruled. They certainly had no say as to the original establishment of this form of government and they have never been given a chance to declare whether they wish to maintain it. It is, however, fairly certain that in Prussia there are few persons who would wish to abolish monarchical rule if they could. It is true that the Social Democratic party, with its very large membership, is strongly insistent

³ The paragraphs dealing with the functions of the legislative chambers in Prussia are taken from an article by the author entitled "The Prussian Theory of Monarchy," which appeared in the *American Political Science Review* for November, 1917.

that the exercise of all royal powers should be brought under parliamentary control, but they do not advocate the abolishment of the monarchy itself. All parties are agreed that Prussia needs a strong executive: the only dispute is as to the political responsibility under which the executive shall act.

Prussian publicists are not content, however, to argue the merits of monarchy for Prussia upon purely rational and pragmatic grounds. Instead, we find it constantly asserted that the German people are inherently monarchically-minded; that Providence as manifested in Prussian history has given a sacrosanctity to monarchy which raises it, as an institution, to a plane where it is no longer necessary continuously to apply the touchstone of practical utility and consonance with desires of the people. At times, indeed, we find it argued that monarchy has in itself inherent qualities which point it out as the best form of rule for all peoples and under all circumstances. But still more frequently we find it maintained that, for the German peoples, at any rate, its value is so absolute that even to question it is a political impiety. In other words, throughout German political writings we find a tendency to ascribe to monarchy in general, and to Prussian Monarchy in particular, an ontological or metaphysical perfection that shuts out utilitarian argument. In this sense monarchy is mystically conceived and takes its place alongside the transcendental conception of the State with which I dealt in my former paper.

It is, however, not necessary to stress this point of the Prussian justification of monarchy in the abstract, for the existence of monarchy is necessarily implied not only in the repeated denials that the governed have the right to determine the form of government which they will have, but also in the claim of the Hohenzollerns that they have a personal and indefeasible right to the throne.

Kant, in his *Philosophy of Law* (p. 170), declares that from the very nature of government the executive function of the supreme ruler should be regarded as irresistible. He denies that resistance to royal oppression is ever justified. "If," he says, "the ruler or regent as the organ of the supreme power proceeds in violation of the laws . . . the subject can interpose complaints and objections to this injustice, but not active resistance" (p. 175). And a little later on he says:

"There can not even be an article contained in the political constitution that would make it possible for a power in that State, in case of transgression of the constitutional laws by the supreme authority, to resist or even to restrict it in any way." Thus we find it stated not merely as an advisable principle of constitutional law that the King should be above the law, but as metaphysically involved in the very idea of political rule.

In truth, German publicists are only logical when they deny that the wishes of the governed should determine the form of the government of the State, for if, as they assert, the State does not exist primarily for the welfare of the governed, why should their consent be sought? Hegel contemptuously refers to the people as that part of the State which does not know what it wants, anyway. Professor Troeltsch, of the University of Berlin, in a paper published since the war began, speaks with approval of the fact that German writers have "opposed the democratic fiction that the State is an institution created by the individuals for their own security and happiness."⁴ And in the same volume of essays in which this commendation is made, Professor Otto Hintze, also of the University of Berlin, speaking of the Prussian system of rule, has this to say:

It is a form of government which does not seek primarily the comfort and happiness of the individual, but rather the power and greatness of the State, since without the latter general prosperity can not be secure. This system, which has made the relatively large standing army the backbone of a central administration, that takes cognizance of every man and every penny, that teaches self-denial, order and conscientiousness in civil as well as military life, and that has accustomed its citizens rather to fulfil their political duties than to aim at the increase of their political rights . . . It opposes a transformation that would place the government in the hands of changing majorities and subject the army to corrupt parliamentary influences — a statement true not only of Prussia but of entire Germany.

The paragraph which I have quoted I consider a very illuminating one. In it we obtain, I think, an accurate view of the dominant Teutonic conviction as to the relation that exists between the welfare

⁴ "The Spirit of German Kultur," in the volume entitled *Deutschland und der Weltkrieg*, published in 1915.

of the State and the welfare of its people, "Seek ye first the Kingdom of the Hohenzollerns," the people are told, and take it as a matter of faith that, despite the sacrifices that may have to be made, all will ultimately be for your best good. Do not ask for a participation in your own government, because that will weaken the executive power of the State, to weaken which, as Treitschke has said, is the crime of political crimes, the sin against the Holy Ghost.

In result, then, the Prussian people are taught, and have very generally come to believe, that, viewed metaphysically, the affairs of this world are so ordered that it is irrational for them to demand the right to determine for themselves the form of government to whose control they shall submit, or to claim a participation in its operation. Thus the German people have come to feel that they are free so long as they have the liberty to exercise their faculty for abstract reasoning. And, by a remarkable intellectual feat, they have come to believe that this reason tells them that they do not need to keep their institutions of learning free from political influence. Thus, though they reserve to themselves what they call inward or rational freedom, they surrender control of the schools and universities which tell them what this Reason teaches. Their writers sometimes lay stress upon the point that private citizens participate actively in local governments, but the status and powers of these governments are fixed by the central government in which they are taught to believe they have no ethical or rational right to control. "We understand . . . by self-government," says the eminent Professor Gustav von Schmoller, "the administration of the municipalities and other communal units by citizens themselves, with more or less independence as regards the state authorities and officials."⁵ This independence, even if more rather than less, relates to matters only of local concern, that is, to matters of business methods and administration, and has no relation to the general political policies of the State itself.

Perhaps I can make this German conception of freedom plainer if I say that the Germans have come to attach such a high regard to order, unity, and system that they look askance at the variety and,

⁵ "The Origin and Nature of German Institutions," included in the collection of essays published in 1915 under the title *Deutschland und der Weltkrieg*.

to them, disorder, that results where freer play to individual interests and desires is allowed. In other words, the typical German is content to have his life minutely regulated if he can feel himself secured from the interference or annoyance of the unregulated actions of others.

Let me again quote from the volume of essays, published since the war began, in which some of the best known university professors attempted in sober and scientific manner to interpret German ideals to the rest of the world. In his essay entitled "The Spirit of German Kultur," Professor Troeltsch says:

It accords with a strong monarchy, such as we require, that its hand should be felt everywhere, both in great and little things. Personal freedom and human dignity do not suffer thereby in the least. While public servants are placed in a safer and more independent position, owing to the rights guaranteed to them by the laws, than in democracies, the average citizen experiences absolutely no repression through the monarchy. . . . We, at any rate, consider ourselves in many respects freer and more independent than the citizens of great democracies.

And, several pages later on, he continues:

All the things here mentioned — monarchy, army, school, administration and economy — rest upon an extraordinary instinct for order, combined with stern discipline and an earnest sense of duty. . . . Order and duty, solidarity and discipline, are the watchwords of our officialdom, of associations and corporations, of large and small business concerns, of our labor unions, and of the great social insurance undertakings. Method and system are the principles of scientific work and technical arts, of education and social legislation.

The dominating influence of regulation and order, Professor Troeltsch says, is evident even in the aesthetic arts, for he continues:

Even free artistic temperament and imagination do not move only in the sphere of inspiration and mood, but seek, precisely in the case of our greatest men, to take their place in the general psychic development, in the cosmic conception and in the scheme of moral achievement. No examples need be mentioned, for this is the characteristic trait of the German which strikes strangers first of all.

Finally, upon this point Professor Santayana, of Harvard, speaking of the very special meaning given to the idea of freedom in German philosophical thought, says:

It does not refer to any possibility of choice or to any private initiative. It means rather that sense of freedom which we acquire when we do gladly and well what we have to do anyhow. . . . [It] is like the freedom of the angels in Heaven who see the face of God and can not sin. It lies in such a deep love and understanding of what is actually established that you would not have it otherwise; you appropriate and bless it all and feel it to be the providential expression of your own spirit. You are enlarged by sympathy with your work, your country and the universe, until you are no longer conscious of the least distinction between the Creator, the State and yourself. Your compulsory service then becomes perfect freedom.⁶

Having ascribed at least a quasi-divinity to the State, and with such a philosophical conception of freedom as this, it becomes clear how a people who justly pride themselves upon an intellectual development that extends throughout the whole community, can yet content themselves with surrendering control over not only the details of their everyday life, but the broad domestic and international policies of their government. Thus, step by step, the argument proceeds: The State is a divine being, or, if metaphysical be preferred to theological terminology, it is a mystical entity in which the unity of a people as a subjective idea of Reason becomes objectively Real. In either case, power in the greatest possible amount is of the essence of this State-being. The exercise of this power is vested in the executive. Restraints upon the free exercise of this executive power operate to lessen its effectiveness and therefore can not be justified. A division of it necessarily weakens it, and, therefore, a strong monarchy is the best type of government.⁷

In order, however, that the argument which deprives the people of all rights of control over their national government may be complete — in order that, as it were, the wheel may swing full circle, one further step has to be taken, and this is to have it absolutely determined for them who their monarch shall be. This step is taken when they acquiesce in the claim of their King that to him belongs the crown as an original personal right, and not as a grant from his people. This

⁶ *The New Republic*, August 28, 1915.

⁷ "Since the State is primarily power, that State which gathers authority most completely into the hand of one and there leaves it most independent, approaches most nearly to the ideal." — Treitschke, *Politics*, I, 13.

right the present King has seized every possible occasion to assert as belonging to him as the head of the Hohenzollern family.

In Brēmen, on April 21, 1890, the Kaiser said:

The fact that we have been able to achieve what has been achieved is primarily due to the fact that in our House the tradition prevails that we regard ourselves as appointed by God to reign over the peoples whom we have been called to rule, and to guide them in accordance with their welfare and the furtherance of their material and spiritual interests.

In Berlin, on February 20, 1891, he said:

You know that I regard my whole position and my mission as one entrusted to me by God, and that I am called upon to execute the mandates of a Higher Being to whom I shall hereafter have to render account.

In a speech delivered August 25, 1910, he said:

Here [in Königsberg] my grandfather again, by his own right, set the Prussian crown upon his head, once more distinctly emphasizing the fact that it was accorded to him by the will of God alone . . . and that he looked upon himself as the chosen instrument of heaven. . . . Looking upon myself as the instrument of the Lord, without regard to the opinions and intentions of the day, I go my way.

In his proclamation to the Army of the East, in 1914, the Kaiser said:

Remember that you are a chosen people. The spirit of the Lord has descended upon me because I am the Emperor of the Germans. I am the instrument of the Almighty, I am his sword, his agent. Woe and death to those who shall oppose my will. Woe and death to those who do not believe in my mission. . . . Let them perish, all the enemies of the German people! God demands their destruction, God who, by my mouth, bids you to do His will.

In these and other utterances it is clear that Wilhelm regards himself as individually selected by God to direct the political destinies of his people. If, however, we seek to learn the exact logical steps or the mental processes by means of which he has arrived at this conviction, we find no clear guidance, for he has not thought it fit, or deemed it necessary, thus far to take the world into his confidence. We are therefore obliged to speculate as to this with such guidance as we

may obtain from other sources, or with reliance upon reasonable probabilities.

There would appear to be no evidence that the Kaiser believes that in any explicit and unmistakable manner God has spoken directly to him, giving to him the political mission which he claims to have. Nor has it been reported that he claims ever to have had an apocalyptic vision in which this endowment of authority was made. Not in this direct and immediate sense, then, does the Kaiser claim to be the vicegerent of God. Rather, I think, he is convinced that, as Hegel taught, there is a rationality to human history; that in the unfolding events of this world there can be discerned a divine or providential factor; and that, regarded in this light, his right to rule is but a part of the divine right of the Hohenzollern family to rule, of the divine right of Prussia to take the leadership of the Teutons, and of the divine right of the Teutons to exercise the dominant authority in the world.

The divinity which thus does hedge him about is strictly personal to himself. Its aura does not include other officials within its influence. "In our country," said Professor Wilhelm Ostwald, soon after the outbreak of the war, "God the Father is reserved for the personal use of the Emperor. In one instance He [God] was mentioned in a report of the General Staff, but it is to be noted that He has not appeared there a second time."⁸

Fernau, himself a German, in his work *The Coming Democracy*, has a chapter entitled "The Basis of Dynastic Power," in which he shows that in Germany allegiance is due not to the constitution or to the State but to the person of the ruler. He points out that by Article 64 of the Imperial Constitution the soldiers swear fealty not to the constitution but "to render unconditional obedience to the orders of the Emperor"; and that by paragraph 108 of the Prussian Constitution it is expressly provided that "a swearing-in of the army upon the constitution of the country does not take place."

"If any one still has doubts on this subject," says Fernau, "let him read the proclamations and speeches of William II. . . . In William

⁸ In an interview, extracts from which were published in the *Paris Temps*, November 26, 1914.

II's speeches, wherever they relate to the army, we find the possessive pronoun of the first person; my army, my guard, my engineers, my officers, my soldiers, my fleet, etc. . . . At Breslau on December 2, 1896, he says: 'The more the people shelter themselves behind catch-words and party considerations, the more firmly and securely do I count upon my army, and the more confidently do I hope that my army, either without or within my realms, will wait upon my wishes and my behests. You are called upon, in the first place, to protect me against internal and external foes!'"

This does not mean, however, that the King rests his rights of sovereignty upon the patrimonial idea that Prussia, its people and their lives, belong to him as property. This theory is, indeed, consistent with the divine right theory, but not a necessary consequence of it. That is to say, it can be held that by divine intendment the realm and its people and their goods have been placed as property in the possession of the King. But, on the other hand, it is equally possible to hold that it is the divine will that the supreme ruler of a State should act only as a trustee for his people. That the present Kaiser regards himself as a trustee in this sense and not as an owner of sovereignty is, I think, certain — certain at least if we may accept his own words.

To just what extent the divine right doctrine of the monarchy, and of the Hohenzollern family to the throne of Prussia, prevails generally in Prussia it is difficult to say. Certain it is that it finds no emphatic support in the writings of the present-day German political philosophers and constitutional jurists; and yet, upon the other hand, we find practically no formal adverse criticisms of it. This remarkable silence upon this point would possibly indicate that the scientific mind is not able to accept it, but that for prudential or other reasons it is thought best not to criticize it. As throwing some light upon professional reticence upon this point is the incident referred to by Mr. Dawson, a well-known authority on conditions in Germany.

In 1902 [he says] the Breslau Professor of Jurisprudence, Dr. W. Schücking, in the course of a lecture on the question whether the succession to the throne could be regulated by law, remarked that he would "pass over the doctrine of monarchy by God's grace as being a non-juristic question." He was denounced by a hearer — a fact which tells its own tale — in a Berlin conservative newspaper; and

soon after received a warning from the Minister of Education containing the reminder that "he might teach what he wished, but he must always reckon with the possibility of his services being no longer required." Later interferences with his liberty led this independent-minded teacher to leave Prussia for one of the more tolerant German States.⁹

The most specific discussion that I have found upon the Kaiser's claim to divine right is that of Dr. Otto Hintze; Professor of History of the University of Berlin. Writing since the beginning of the war, he denies that the German people now accept such exalted conceptions as those, for example, of Frederick William IV. In criticizing the utterances of the present Kaiser, he says that they are without significance from the standpoint of constitutional law — which no one that I know of has ever asserted — and then gives the following interpretation of what is believed upon this point. "Our rulers," Professor Hintze says, "declare themselves to be such 'by the Grace of God.' . . . The meaning of this characterization from the viewpoint of political law is simply that the royal power was not granted by the people, but that it exists upon ancient, historical right that has grown and refined coincident with our history, thus proceeding from a combination of factors which piety may be inclined to ascribe to a higher dispensation."¹⁰

⁹ Dawson, *What is Wrong with Germany*, p. 64.

¹⁰ Treitschke, in his *Politics* (I, 58) says: "The claim to rule by the grace of God is no more than a devout aspiration which does not attempt to formulate a mystical and spiritual right to power, but simply to assert that the inscrutable will of Providence has decreed the elevation of a particular family above its rivals. Piety is a fundamental requirement in a monarch, since the notion that he stands immeasurably above all other men may actually unsettle his reason, if it be not balanced by personal humility which compels him to acknowledge himself God's instrument. All this does not abrogate the axiom that it is the nature and aim of monarchy to be of this world. Genuine monarchy does not aspire to partnership with the Almighty. On the other hand, monarchy stands opposed to republicanism. In a republic, authority is founded upon the will of the governed, while in a monarchy it is derived from the historical claim of a particular family and concentrated in the will of one man who wears the crown and who, though surrounded by more or less responsible advisers, ultimately decides every question himself."

The recognition by Treitschke of the Providential element, of course, gives to monarchy and to the reigning family a supra-rational or transcendental basis of right.

If this be a fair statement of the scientific position, as held in the higher institutions of learning, we may have little doubt that when we descend to popular opinion the opinion is general, except of course among the Social Democrats, — a very considerable, but as yet politically uncontrolling exception, — that the King and Kaiser does rule by a divine delegation of authority.

We come now to the final point which I wish to discuss in this paper, which is this: Granting that there exists in Prussia the character of monarchical government which I have described, What concern is this to the peoples of other States? And, in view of the generally acknowledged principle of international law, that one nation is not presumed to have the right to bring pressure to bear upon another State to compel it to change the form of government, with what right or justice are the Entente Powers now demanding, as a condition of permanent peace, that Prussia shall effect a radical change in her scheme of political rule, or at least in the principles upon which it is founded, and upon which, in the past, it has been operated?

The answer to this question, shortly stated, is this:

As regards the particular monarch now reigning, it has appeared that he and the advisers by whom he has seen fit to surround himself have no respect for their own covenanted word and no regard for the rights of other peoples as sanctioned by long-established rules of international law. For the sake of securing his own end he has shown no compunction in visiting upon wholly innocent persons — the Belgians, for example — immeasurable and irremediable injuries. This he has justified to himself as an agent of the Almighty, and, acquiescing in this claim, the people of Germany have been led to support him. Giving motive force to his acts has, of course, been the assumption that he is the legislative mouthpiece and the executive arm of a transcendent being, the National State of Germany, which has for its aim and mission to spread throughout the world that Kultur which it has itself created.

When thus conceived it is clear that the Prussian conception of monarchy assumes a significance which leaves it no longer a matter with which only the Germans themselves are concerned. Until this doctrine is discredited there can be no possible security to other peoples.

It is, therefore, a matter of the merest precaution and self-defense that the Entente Powers and the United States should demand of the German people that, if they wish to continue to be monarchically governed, they should eliminate from their political philosophy and from their constitutional practice the features which have made possible the policies which their government has adopted.

The demand, therefore, of the Allied Powers that Prussian autocracy be overthrown is not based upon a claim upon their part that they have a right to impose their own political ideas upon the Germans, for if this were so they would subject themselves to one of the chief indictments which they have brought against the Prussians. Rather, their contention is compacted of two convictions: That only thus can they obtain treaty agreements the binding force of which they can have an assurance will be respected; and that only thus will it be possible to prevent a continued acceptance by the German people of political principles and of national policies which not only furnish a constant menace to international peace and comity, but threaten to destroy civilization itself. As it now appears to the United States and to the Entente Powers, but two alternatives appear tolerable. Either the political power of Germany must be so weakened that it can no longer endanger the world, or it must be taken out of the autocratic control of those who have so misused it.

Stated in other words, the conviction of the Entente Powers is that this much at least may be said of democracy: That released from false teaching imposed upon them from above, and left free to form and express their own judgments regarding matters of public policy and of public morality, no intellectually enlightened people will adopt or support such policies as have been framed by the autocratic rulers of Germany and sought to be executed as divine commands. This, then, is the real meaning of the demand that the world must be made safe for democracy. Never again must it be possible for a few men intoxicated with their own power and demented by a belief in the divine origin of their own authority to plunge a whole world into an abyss of horror and suffering.

W. W. WILLOUGHBY.

WHAT IS MEANT BY THE FREEDOM OF THE SEAS

FREEDOM is a relative term. It involves limitations as well as rights. There is no such thing as absolute freedom of any kind. A man is free only when his neighbors are limited. The matter is one of adjustment. As to the seas, the question is not one of "whether," but of "how much." It is, therefore, not surprising that there is a wide divergence of opinion as to what the term "freedom of the seas" means.

Each world Power has certain major and certain minor interests, and it is from this point of view that each fixes its definition of terms. Possibly peace will come about through an agreement on phrases, the divergences of opinion appearing only on conference; but when this country speaks of the "freedom of the seas" as a necessary peace term, it states nothing more definite than if it had said, "we want peace with honor."

Freedom of the seas in time of peace is so generally acknowledged that it is hard to realize it was not so very long ago, as the course of history runs, that America fought for this principle. For a long time it was strenuously asserted that the cruisers of one nation might lawfully search merchant vessels of another nation in time of peace. Algiers, Tripoli, Tunis, and Morocco, in the early part of the last century, supported themselves by tribute levied on commerce as an alternative to piratical depredations. America's first military excursion to Europe put a stop to this practice.

Since the freedom of the seas in time of peace is now questioned by no one, this can not be the intent of the term today. Neither does it mean that all countries shall have free access to the seas, or that tariffs and other restraints upon commerce over the seas shall be removed, or that canals, straits, and other waterways shall be

unfortified and internationalized. While the security or freedom of commerce of various nations might depend to a large extent upon conclusions reached on these subjects, yet they are problems other than are included in the term under consideration.

In our note to Great Britain of December 26, 1914, this country said it "confidently awaited amendment to a course of action which denied to neutral commerce the freedom to which it was entitled by the law of nations." In our note to Germany of July 21, 1915, we insisted that Germany and ourselves were "both contending for the freedom of the seas." The only questions involved were those of commerce in time of war on the open seas.

Had international law been strictly observed by belligerents, neutral commerce might have been carried on during this war with little substantial interference; but the illogical compromises in international law, involved in subtlety and technicality, made the claims of belligerents seem sound, and the demands of neutrals, in the words of Mr. Asquith, a web of "juridical niceties." A belligerent had a right to visit and search a neutral ship and if, upon examination, the vessel was found to be engaged in unneutral service or to be carrying contraband of war intended for the enemy government or armed forces, he had the further right to capture and condemn. A belligerent had the right to blockade, not an enemy country, but merely enemy ports, and to capture and condemn any vessel trying to break such blockade. These were the only exceptions to universal equality of right upon the seas.¹ Enemy vessels were subject to capture, but enemy goods (except contraband) under a neutral flag were safe.

In actual practice, had the law been regarded, very little opportunity would have been left to interfere with enemy trade. If the original commercial transaction had ended in a neutral country, a new contract could have been made to sell to a belligerent and there would have been no right of interference even with contraband. Visit and search would merely have indicated that the merchandise was intended for a neutral country, and the transaction could have been so framed that this would unquestionably have been the fact. The right to blockade an enemy's ports and coasts was of considerable

¹ Note of Department of State to British Government, March 30, 1915.

importance when there was great difficulty of shipment and of transshipment. It means little in view of present transportation opportunities, particularly where a country is practically surrounded by neutrals. Under international law as it existed prior to the war, belligerent rights were so circumscribed that for all practical purposes neutrals might have traded almost as freely as if private property (except enemy vessels) had been immune from capture.

Secretary of State Lansing requested the American Institute of International Law, meeting at Havana on January 22, 1917, to consider a code of neutrality. The code presented was the private work of one of the members of the Institute and was referred to the national societies of international law for consideration and future action. While not authoritative, yet it may be regarded as representing the American point of view. The code contained a declaration that private property at sea was inviolable, but "if [ships carry] contraband, this may be confiscated or destroyed by the captor."

The historical American demand (and in the light of this, one must determine what we mean by freedom of the seas) was contained in the instructions to the American Delegation to the First Hague Conference:

As the United States has for many years advocated the exemption of all private property *not contraband of war* from hostile treatment, you are authorized to propose to the Conference the principle of extending to strictly private property at sea the immunity from destruction or capture by belligerent Powers which such property already enjoys on land as worthy of being incorporated into the permanent law of civilized nations.

The rule respecting private property on land was framed by the Peace Conference of 1907. Article 46 stated:—"Private property . . . must be respected" and "can not be confiscated." But by Article 53 an army of occupation might seize the same class of goods as we regard as contraband, subject to restoration and compensation, on the conclusion of peace.

We therefore propose that the seas be free for everything except contraband. That is our kind of freedom — not perhaps so idealistic as a more unlimited freedom, but perhaps more practical.

So long as a doctrine of contraband is recognized, the same kind of indefiniteness, the same possible subterfuge, the same dangerous misunderstandings that at present exist, will continue. If belligerents are allowed to fix their own contraband lists (even upon notification and even though only absolute contraband is contemplated) there will be room for differences of view and interpretation. The doctrine of continuous voyage prior to this war was limited specifically to absolute contraband. During this war it has been developed into a theory of ultimate consumption covering absolute, conditional, and non-contraband, and unless eradicated from the law of nations will always play havoc with neutral commerce. There is no logical distinction between supplying civilians with food and supplying an army with food. The more civilians have, the more will be released to the army. The Declaration of Paris, thought to have been so well engrafted on international law that a violation would be impossible, has practically become a dead letter during this war, because while a neutral flag covered enemy goods, and neutral goods on an enemy vessel were immune from capture, there was an exception of contraband — and practically everything has been made contraband! Immunity of private property at sea must include contraband, or freedom of the seas will mean nothing.

Recognizing this, the British Government, in the Hague Conference of 1907, proposed that contraband be entirely abolished. Twenty-six states supported the British proposal; five (Germany, France, Russia, the United States, and Montenegro) voted against it; four abstained from voting; and nine states took no part at all. It was evident, however, that the law of blockade involving the doctrine of continuous voyage was necessarily connected with consideration of the abolition of contraband. It was feared that an agreement on the abolition of contraband alone would leave an opportunity through a loose interpretation of the law of blockade to negative what was apparently conceded. As was said by Dr. James Brown Scott,² "Marschall von Bieberstein was eminently justified in conditioning his approval of the proposed immunity of private property upon an agreement upon contraband and blockade."

² The Hague Peace Conferences of 1899 and 1907, Vol. I, p. 705.

The purpose of a naval blockade is to reduce a fortress or other place of military occupation. The purpose of a commercial blockade is to affect noncombatants and to produce such distress among them as to bring pressure to bear upon the enemy government to make peace.

Along with the abolition of contraband must go the abolition of commercial blockade, if the seas are to be free. This was supported by the draft presented to the Havana Conference. "The commercial blockade both of the belligerent ports and the maritime zones along belligerent coasts is formally forbidden, no matter what the means by which the blockade is to be effected."

The American doctrine would further extend immunity to enemy merchant vessels. We refused to enter into the Declaration of Paris because it did not go this far. England, with its large merchant fleet, particularly in view of the development of the submarine, may find its major interest in supporting this doctrine against which it has always contended. Germany and Austria supported the American proposal at the Second Hague Conference, but possibly their views may have changed in view of the effectiveness of the submarine. At any rate, the offensive power of all nations to destroy the merchant fleets of their enemies has been greatly enhanced. Opposed to Great Britain's supremacy at sea is the fact that her merchant marine is so much larger than that of any other Power and her dependence upon it so much greater, that an agreement on this point might seem more important to her than heretofore. It is inconceivable, however, that an agreement can be reached which would allow the capture but forbid the destruction of enemy ships. Such a distinction disregards belligerent necessities. Either enemy merchant vessels must be free from capture and destruction, or it must be agreed that immunity extends neither to life nor property on an enemy ship. Granted that an agreement can be reached on either one of the above alternatives or the other, there is nothing indefinite about the proposition, and what international law needs more than anything else is certainty.

"Freedom of the seas" means abolition of the doctrine of contraband and of commercial blockades, and of the right of capture or destruction of enemy vessels. Any doctrine of contraband involving changing lists of material, notification, illogical distinction between

civilians and armed forces, questions of continuous voyage and ultimate consumption, merely cause confusion and different interpretations which threaten to and do involve neutrals. Commercial blockades involve some of these difficulties. There can be no certainty while such doctrines remain in the law. To permit capture but condemn destruction of enemy merchant vessels is likewise illogical, and is a law that will never be observed. The two must be taken together. Either the law must allow both or neither, and neutrals must act accordingly; but if the law is either way, it is neither illogical nor uncertain. So long as there is certainty of rule and the same principle is applicable to either method of interference, the greatest danger — that of uncertainty — will be avoided.

Freedom means certainty of clear rights. The demand for the freedom of the seas means that international law must be made logical, that the cobwebs must be swept away, that legal quibbles must be avoided. As Mr. Root said in his instructions to the American Delegation at the First Hague Conference: "Misunderstandings regarding the rights and duties of neutrals constantly tend to involve them in controversy with one or the other belligerent."

The historical American doctrine of immunity of private property at sea (including enemy vessels, but excepting contraband) is, on analysis, not only involved but will not avoid the present equivocations. Everything will be called contraband, and whether intended for neutrals or for belligerents, a doctrine of ultimate consumption, supported not by fact but by inference, will be applied. The Declaration of Paris will have no force. Enemy ships themselves will be called contraband, and they or their contents captured, and reprisals will lead to destruction.

So that what we mean by the freedom of the seas does not do away with the real difficulty of confusion. The abolition of the doctrine of contraband heretofore supported by the British but not by the American Government; the abolition of commercial blockade, now presumably a doctrine of the American Government though not of the British; and the American doctrine of immunity of enemy merchant ships would all seem to be necessary before there can be said to be freedom of the seas. Such freedom must be based upon definite legal

and logical principles, rather than upon compromises not founded in reason which profess to grant that which no belligerent would ever concede.

Of course, this means that a merchant ship loaded to the gunwale with guns and ammunition would be allowed to pass by an enemy cruiser. "Preposterous," you say. "Even on land contraband may be requisitioned and held." The thought is astounding only because it is new. The fact that private property of a neutral in a neutral country is inviolable may well interfere with the operations of a belligerent, but it has been a concept so universally accepted that no one would question it. For instance, Holland might have an ammunition factory within a hundred feet of the German border and might from that factory supply the Allies. If the Germans invaded Dutch territory to seize that factory a state of war would necessarily arise. We should all howl with indignation at the violation of Dutch territory. That is because no one would for a moment question the inviolability of private property on land in a neutral state. Of course, the sea does not belong to a neutral nation, but neither does it belong to a belligerent nation.

Does the proposal for freedom of the seas necessarily depend upon the closely related propositions of limitation of armament and a league of nations to enforce the law? English opinion would make such propositions contingent. The Wilson suggestion includes them all, but rather as interrelated than as mutually conditional. The Germans seem to profess to be unable to see any connection whatever. But the struggle for the freedom of the seas in war time finds its support in inherent justice and in the fact that, irrespective of other considerations, no power owns the ocean. A league of nations would undoubtedly make the observance of the law more probable, yet the law and its enforcement are two different things. There is little doubt that in the absence of superior force, whether moral or physical, any agreement would be violated if that were to the vital interest of a belligerent; but after all even civil law, with all our vast machinery of government and our ability to punish violation, is rarely specifically enforced. The law merely fixes a measure of damage, to which a violator must respond.

There are few world wars, however. Where they do exist, they ordinarily develop out of conflicts among a few nations and others are entangled because of shifting interpretations of what the law is. Unless practically all great nations are engaged, those involved would not dare to violate a definitely fixed body of law. If the rights of neutral nations were clear — if the principles were on a logical foundation based upon sound reasoning, it would seldom be to the military interest of a belligerent to rouse the world over depredations which could have no possible justification or explanation. One thing seems clear: either we must accept the doctrine of immunity, or the rights of belligerents under the law must be so extended as to be of some practical benefit to them. The latter would mean rivalry in development of naval armament, because heretofore nations in regarding the value of control of the seas have had in mind only the limited rights of belligerents and the protection by law of the most considerable portion of foreign trade. Neutrals would vigorously oppose any extension of belligerent rights. The present law, based upon an illogical series of compromises, merely leads to an immoderate extension when it suits the purposes of the belligerent. The only alternative would seem to be the inviolability of private property at sea, including even contraband and enemy merchant ships.

The law must be logical and definite. It must be based upon the principle that belligerent rights do not extend beyond the territory controlled or occupied. It must be founded upon the sovereign rights of nations to travel freely over the oceans, which are owned by none; on a recognition that law is as potent an instrument of protection as might.

ARTHUR GARFIELD HAYS.

AN EARLY DIPLOMATIC CONTROVERSY BETWEEN THE UNITED STATES AND BRAZIL

It was two years after the United States formally declared for the recognition of the new Latin-American states and after several Spanish-American states had been recognized before the question of recognizing Brazil arose. When, in April, 1824, Rebello presented himself in Washington as the Brazilian chargé, a difference of opinion arose in Monroe's cabinet, because Brazil was a monarchy, while all of the other American governments were republics, and some hoped that monarchy might have no foothold on the continent. Others, however, advocated the recognition of Brazil the more strongly because it was a monarchy in order to show the world that it was the fact of independence which actuated the United States rather than the form of government.

The opposition to recognition was strengthened by recent news of a formidable separatist movement in the north, with Pernambuco as a center, the purpose of which was to establish an independent republic under the name of the Federation of the Equator. This raised a serious doubt whether the government at Rio de Janeiro were really in effective control. It was reported, too, that the assistance of French naval vessels had been accepted in order to repress the Pernambuco revolt. This conjured up the specter of the so-called Holy Alliance, for the exclusion of which from America Monroe's famous message of the preceding December had declared. There was also a strong suspicion, supported by persistent rumors, that Dom Pedro (who had allowed himself to be made Emperor when in 1822 Brazilian independence from Portugal was declared, who had summoned a constituent assembly and then quarreled with it and finally forcibly dismissed it because it proved too liberal to suit his ideas of prerogative,

and who had appointed a council that had drawn up a fairly liberal constitution in harmony with his wishes which he had not yet taken the oath to observe) really wished to restore Portuguese sovereignty and rule Brazil as a vassal of his father, the King of Portugal. About the middle of May, however, word came that in the preceding March the Emperor had taken the oath to the constitution of the independent Brazilian Empire. After Rebello had given assurances concerning the suppression of the slave trade and the observance of treaties that had been negotiated with Portugal, he was formally received by President Monroe as Brazilian chargé on May 26, 1824. He expressed his gratitude that "the Government of the United States has been the first to acknowledge the independence of Brazil."¹

This was the beginning of what for a time promised to be very cordial relations between the two Powers. On the occasion of his presentation Rebello had suggested a "concert of American Powers to sustain the general system of American independence." In January of the next year, before the mother country had yet recognized the independence of Brazil, he proposed formally that the United States should enter into an alliance with Brazil to sustain the latter's independence in case Portugal should be assisted by any other Power in an attempt to restore her former sway over Brazil. He suggested that in certain contingencies the Spanish-American countries might be invited to adhere to the proposed alliance to protect them against a similar danger.² This very early proposal of a Pan-American league is interesting and the United States reply to it is significant as being an early interpretation of the Monroe Doctrine. The proposal was made only a few weeks before the close of the Monroe administration and was not answered until shortly after the Adams administration had taken control, when Henry Clay, the Secretary of State, an enthusiastic advocate of the cause of South American independence, replied that, while the President adhered to the principles set forth in the message of his predecessor of December 2, 1823, the prospect of a speedy peace between Portugal and Brazil seemed to make such an alliance unnecessary; but, he said, if there should be a renewal of

¹ Adams, C. F., *Memoirs of John Quincy Adams*, VI, 280, 281, 283, 285, 308, 311, 314, 317, 328, 354, 358.

² *Ibid.*, 358, 475.

demonstrations on the part of the European allies against the independence of the American states, the President would give to that condition of things every consideration which its importance would undoubtedly demand. This did not promise anything definite, yet it could be legitimately interpreted to mean that in case the contemplated emergency should arise the executive department would be disposed, so far as it was able, to assist the new states in maintaining their independence; but, Clay explained, the executive department could not bind the United States Government to support the policy, nor could it act alone, since to engage in war to support the independence of the new countries would require the consent of Congress.³

When the question of the recognition of Brazil by the formal reception of her chargé, Rebello, was pending, Adams, then Secretary of State, said it would be advisable to appoint at the same time, or very soon thereafter, a chargé to represent the United States at Rio de Janeiro; and suggested that the appointment be conferred on Condé Raguet, a wealthy merchant, editor, author, and political economist of Philadelphia, who since 1822 had been residing at Rio de Janeiro as commercial agent, or consul, of the United States. President Monroe, however, thought the appointment might be deferred; and did not make it before the end of his administration, in spite of the fact that Rebello had manifested an earnest desire that the post should be filled in order to complete the diplomatic relations between the two countries. Among the many diplomatic appointments sent to the Senate immediately after the beginning of the Adams administration, March, 1825, was that of "Condé Raguet of Pennsylvania, chargé d'affaires to Brazil." His instructions were prepared in April.⁴

When Raguet's promotion and instructions reached him dark days were approaching for the new government to which he was thus accredited; and its troubles were destined to involve him in serious

³ Robertson, W. S., *South America and the Monroe Doctrine*, *Political Science Quarterly*, XXX, 82-105; Manning, William R., *Statements, Interpretations, and Applications of the Monroe Doctrine, etc., 1823-1845*, *Proceedings of the American Society of International Law*, 1914, 35.

⁴ Adams, C. F., *Memoirs of John Quincy Adams*, VI, 475, 520, 530.

difficulties because of his new and more responsible position. All of these troubles grew out of a war in which Brazil found herself engaged with the United Provinces of the Rio de la Plata, or Argentina, over their conflicting interests in the region which emerged from the war about three years later as the independent republic of Uruguay, because of which fact this is usually spoken of as the War for Uruguayan Independence.

This quarrel over the Banda Oriental, or Eastern Province, as it had been known in Spanish colonial history, was inherited from the mother countries. The boundary line between the Portuguese dominions in Brazil and the Spanish possessions in the Rio de la Plata region had never been settled, although there had been many conflicts and many attempts at settlement throughout the colonial age, but especially during the last century, the eighteenth. For a few years after the beginning of the general Spanish-American revolution in 1810, Montevideo, the principal center of Spanish authority in the Banda Oriental, remained faithful to the mother country in spite of repeated and sustained efforts of the revolutionary government at Buenos Aires to revolutionize and dominate it.

Finally, in 1814, under the leadership of Artigas, a native of the province, with the assistance of Buenos Airean troops, the last remnant of Spanish authority was overthrown. Artigas insisted, however, that the region should not be subjected to Buenos Aires, and forcibly resisted the determined efforts of that city to control it. The Portuguese court at Rio de Janeiro still claimed the region as its Cisplatine Province and hoped to get peaceable possession by taking advantage of the rivalries between the Spanish factions. But Artigas was as determined to maintain independence of Portugal as of Spain or Buenos Aires. Apprehensive of an attack, he unwisely invaded neighboring Portuguese territory. The Portuguese retaliated, repeatedly defeated him, and finally in 1820 he fled to Paraguay, leaving them in control. In 1821 a special congress was convened at Montevideo under Portuguese authority, composed of representatives from all of the Cisplatine Province, which declared the region incorporated in the Portuguese dominions of Brazil. When, in the following year, the independent Brazilian Empire was proclaimed, it incorporated the Cisplatine

Province and retained peaceable possession for three years.⁵ So little opposition was there to Brazilian rule that the actual government was left largely in the hands of natives of the province, who administered affairs in the name of Brazil. The Government at Buenos Aires, however, never yielded its claim, and made repeated attempts to reach by negotiation a settlement of the conflicting claims in such a manner that the region might become a part of the United Provinces. A little after the middle of 1823 a special Buenos Airean commission went to the Brazilian court and presented a series of notes making propositions for a settlement that would be acceptable to Buenos Aires. No response having been made, a reply was demanded in February, 1824. The reply, which was given on the day following the demand, was a long, courteous, but firm statement of the Brazilian claim and Brazilian rights, and concluded with the declaration: "Therefore, on these important considerations, the Government of His Imperial Majesty can not enter with Buenos Aires on a negotiation which has for its fundamental basis the cession of the Cisplatine State, the inhabitants of which it can not abandon." The special commission returned and reported its failure to the Government at Buenos Aires; and conditions remained *in statu quo* for about another year.⁶

When, early in 1825, news reached Buenos Aires of the crushing defeat of the last important Spanish army in Peru near the end of the preceding year, a number of Uruguayan refugees residing in that city determined to free their native province from the rule of the Brazilian Emperor or perish in the attempt. Under the leadership of La Valleja, they organized the famous band of adventurers immortalized in Uruguayan history as the "Treinta y Tres," or Thirty-three. Of this army of thirty-three, fifteen were officers and eighteen privates. Of course, they expected to recruit a real army from their compatriots in Uruguay; and they succeeded. Even Rivera, the Uruguayan who had been the chief executive of the province in the name of Brazil, joined the rebels. Most other officials followed his example, nearly the whole of the province being quickly lost, except Montevideo, the

⁵ *Manifeste de la Cour de Rio de Janeiro*, . . . 10 décembre, 1825, British and Foreign State Papers, XIII, 775-783.

⁶ *Ibid.*, 748-766.

capital and chief port, which was held by the assistance of the war-ships in the harbor.

Because the evidences of official support from the Government of Buenos Aires were so strong, a Brazilian admiral with a naval force appeared before Buenos Aires in July, 1825, and demanded explanations as a measure short of war. The Argentine authorities protested against the attempt of Brazil to fortify the pen of the negotiator with the guns of an admiral. Several notes were exchanged, and finally the Argentine Government declared negotiations closed. The Brazilian admiral returned to report to his government the failure of his mission. In October the Brazilian Foreign Minister addressed a long argumentative protest to the corresponding official at Buenos Aires demanding that the latter government cease what appeared to the former as warlike preparations and also disavow all connection with Brazil's Cisplatine insurgents. The Argentine reply was a formal declaration that the Banda Oriental was reincorporated in the territory of the United Provinces of the Rio de la Plata, and that the government of the latter would protect it. On December 10 Brazil issued a declaration of war against Argentina, and eleven days later declared all of the ports of the republic in a state of blockade. The Buenos Airean declaration of war was followed by a decree authorizing privateers to prey on Brazilian commerce.⁷

The disastrous influence which the Brazilian blockade of the Argentine ports was bound to have on the already considerable, and rapidly growing, trade from the United States to them led Raguet, the recently appointed chargé of the United States at Rio de Janeiro, to do everything he could to modify its rigor. Even before the declaration of war, notification of the blockade was addressed to him and to the British representative.⁸ Raguet was asked to inform his government and its citizens who were engaged in commerce to the Buenos Airean Republic. A few days thereafter he addressed a lengthy

⁷ *Manifeste de la Cour de Rio de Janeiro*, . . . 10 décembre, 1825, British and Foreign State Papers, XIII, 737-785.

⁸ For the British notification, see *ibid.*, 785. For the notification to Raguet, see S. Amaro to Raguet, December 6, and same to same, December 7, 1825, American State Papers, Foreign Relations, VI, 1025; or House Ex. Doc. No. 281, 20th Cong., 1st sess., 14, 15.

communication to the Brazilian Foreign Minister explaining the views of his government concerning the validity and invalidity of blockades. In two respects the Brazilian blockade as announced failed to conform to those principles, and hence could not be recognized as valid. In the first place the United States held that a blockade in order to be valid must be effective; that is, no port could be considered blockaded unless there were actually a sufficient blockading force before it to prevent access to it. It was manifestly impossible for Brazil to maintain a sufficient force before all ports of the Argentine Republic actually to prevent ingress and egress. Not only the United States, but many other nations held this view, — one destined to be almost universally recognized later. In the second place, the United States denied the validity of general or diplomatic notifications alone and insisted that each vessel on approaching a blockaded port must be warned that it is blockaded and must not be seized as a prize unless it attempts to run the blockade after being warned, — a principle by no means so generally recognized, and subsequently practically abandoned because of changed conditions due to rapid communication of news. He explained many other principles adhered to by his government, frankly admitting that they favored neutrals rather than belligerents, although they did not defeat any legitimate purpose of a blockade; and he argued that it was to the interest of Brazil as well as other new American nations to uphold the more liberal principles, since they were sure to find their greatest opportunity for development in the field of peace and commerce, like the United States, rather than in war, like many European nations.⁹ The United States chargé at Buenos Aires entered into communication with the Brazilian admiral of the blockading squadron and asserted the same principles as Raguet.¹⁰ Several United States naval vessels were sent to cruise along the coasts of Brazil and Argentina to protect United States merchants and citizens. The commanders of these vessels maintained a lively correspondence for many months with the Brazilian

⁹ Raguet to Minister of Foreign Affairs, December 13, 1825, *ibid.*, 9; or American State Papers, Foreign Relations, VI, 278, or 1023.

¹⁰ Forbes to Admiral Lobo, February 13, 1826, *ibid.*, 281; or British and Foreign State Papers, XIII, 822.

admiral, urging the adoption of their government's views. Finally, the Brazilian authorities agreed to modify the blockade to the extent of confining it to the ports actually within the Rio de la Plata, but not to the two or three principal ports for which the United States diplomatic, consular, and naval representatives had so long and ably contended, and which alone might have been effectively blockaded.¹¹

The principle that the individual ship should receive warning and not be liable to capture unless it thereafter tried to violate the blockade was as vigorously contended for, but with less success, although something was conceded in this regard also. At first all ships were seized whether they had or could have had knowledge of the blockade or not and whether they were trying to enter a blockaded port or were on the high seas, if it appeared on examination that they had any intention under any contingency of approaching a blockaded port. Finally the Brazilian authorities agreed that no vessels should be detained unless they were found attempting to enter a blockaded port; and many ships were actually allowed to go after having had a warning entered on their registers, although the Brazilians refused to concede this as a right.¹²

One of the greatest difficulties with which Raguet and the other United States representatives had to contend was the fact that England did not support either of these two important contentions of the United States. On the contrary, correspondence with English representatives shown to the United States chargé expressly declared that the maintenance of an effective force on the spot was not necessary

¹¹ Elliott to Raguet, March 14, 1826, American State Papers, Foreign Relations, VI, 277; Elliott to Secretary of the Navy, March 18, 1826, *ibid.*; Elliott to Bond, April 1, 1826, *ibid.*, 288; Elliott to Admiral Lobo, April 3, 1826, *ibid.*, 284; or British and Foreign State Papers, XIII, 824; Lobo to Elliott, April 6, 1826, *ibid.*, 827, or American State Papers, Foreign Relations, VI, 285; and many other letters in subsequent pages of one or both works.

¹² Elliott to Secretary of Navy, May 5, 1826, American State Papers, Foreign Relations, VI, 283; Raguet to Minister of Foreign Affairs, November 14, 1826, *ibid.*, 1047, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 65; Minister of Marine to Admiral Da Prata, November 29, 1826, *ibid.*, 74, or American State Papers, Foreign Relations, VI, 1051; Raguet to Minister of Foreign Affairs, November 30, 1826, *ibid.*, 1048, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 67; and many other documents in subsequent pages of both publications.

in order to render the blockade valid and make the seizure of vessels bound for nominally blockaded ports legal; and this correspondence also asserted that the declaration of the blockade and the general or diplomatic notification were all that were needed, and that thereafter any ship was liable to capture without warning if it had knowledge of the existence of the blockade and showed any evidence that it intended to approach the blockaded port.¹³ English merchants were suffering as much as those from the United States, but were receiving far less support from the diplomatic and consular representatives of their government.

Another Brazilian practice against which Raguet frequently and vigorously protested was what he and the commanders of the United States naval vessels who seconded his efforts called the impressment of seamen from United States merchant vessels into the service of Brazilian warships. By employing fraud or deceit or intoxication the unwary seamen were frequently enticed on board Brazilian naval vessels and persuaded or frightened or forced to enter the Brazilian service. Some who had gone on vessels built in the United States and sold to the Brazilian Government, finding themselves without employment, had entered voluntarily and then after the expiration of their period of enlistment were detained. Such seamen frequently requested the representatives of their government to secure their release. As such cases multiplied, the patience of Raguet became more and more exhausted and his reclamations and protests became more vigorous. The replies of the government usually promised to investigate and if conditions were found as represented promised that the seamen should be released. When United States merchant vessels were detained under charges of violating, or attempting or intending to violate, the blockade, most of the seamen, instead of being left on board their own vessels under the supervision of the prize crews, as Raguet insisted they should, were removed to the capturing vessel and sometimes inveigled into the Brazilian service, sometimes placed on Brazilian prison ships, and sometimes detained on shore under virtual if not actual imprisonment. They were often deprived of

¹³ Raguet to Clay, June 27, 1826, American State Papers, Foreign Relations, VI, 1028, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 21.

their personal property, their clothing and bedding, and placed in unsanitary, uncomfortable, and criminal surroundings. Bodily punishment was sometimes inflicted on them. Sometimes it turned out that their cases had been misrepresented to Raguet and that they were really prisoners of war taken from Buenos Airean cruisers, many of them built in the United States and manned and commanded by United States citizens under Buenos Airean commissions. Under these circumstances it is not strange that both reclamations and responses were couched in vigorous language, and relations grew more and more strained. In one case the commander of one of the United States naval vessels had sent a force and demanded two seamen under circumstances which made it appear that he intended to take them by force if his demand were not complied with, though he later explained that he would not have done so. They were surrendered without resistance. But the Foreign Minister took up the matter with Raguet, who had apparently been privy to the plan, and demanded the return of the seamen until the pending investigation should show whether they were properly or improperly detained. But they were not returned.¹⁴ Finally orders were given by the Brazilian admiral that all Brazilian ships which had on board any United States seamen who had entered involuntarily or were detained beyond their period of enlistment should be brought in and surrendered.¹⁵ But even this did not end the disputes concerning impressment and mistreatment of seamen.

¹⁴ Raguet to Minister of Foreign Affairs, June 20, 1826, American State Papers, Foreign Affairs, VI, 1029, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 23; Minister of Foreign Affairs to Raguet, June 28, 1826, *ibid.*, 23, or American State Papers, Foreign Affairs, VI, 1029. And see also the following documents in the subsequent pages of one or both publications: Hoffmann to Biddle, August 26, 1826; Raguet to Clay, October 2 and October 31, 1826; Biddle to Admiral Pinto Guedes [Da Prata], January 3, 1827; deposition of Jesse Powell before Consul Bond, January 13, 1827; Biddle to Pinto Guedes, January 14, 1827; Da Prata [Pinto Guedes] to Biddle, January 14, 1827; Biddle to Pinto Guedes, January 22, 1827; Da Prata to Biddle, January 23, 1827; and many others.

¹⁵ Order of Da Prata, January 25, 1827, American State Papers, Foreign Relations, VI, 1081, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 141; Da Prata to Biddle, January 27, 1827, *ibid.*, 140, or American State Papers, Foreign Relations, VI, 1081.

In October, 1826, after a number of Raguet's earlier and less strenuous notes, protests, and reclamations had reached Washington, Clay wrote that the President approved his zealous exertions to prevent an abuse of the blockade privileges, referred him to earlier correspondence with European governments in which the United States had upheld the principles which Raguet was defending, and exhorted him to insist at all times on these principles and remonstrate against their violation.¹⁶ This instruction from his superior strengthened the already stiffening diplomatic backbone of Raguet, and his notes to the Brazilian Government grew more vigorous and undiplomatic. Before Clay's approval had been written, Raguet declared to Clay that his patience was exhausted, reviewed the continuous record of wrongs and indignities which he had been sending to the Department of State during his four years' residence at Rio de Janeiro, and suggested the advisability of bringing the relations with Brazil before Congress in the President's annual message, saying he thought that would have a good effect. He asked authority to demand the immediate restoration of all vessels which had been detained in violation of the principles for which the United States contended; and, in case the demand should not be complied with, he asked consent to demand his passports, saying that he felt sure Brazil would yield for fear the protest of the United States would strengthen the cause of Buenos Aires.¹⁷ In his annual message President Adams did mention in mild language the great irregularities among the Brazilian naval officers, "by whom principles in relation to blockades and to neutral navigation have been brought forward to which we can not subscribe." He believed that the just reparation which had been demanded would not be withheld.¹⁸

Between the time of Raguet's request for more vigorous instructions and his receipt of Clay's approval, which was followed a little

¹⁶ Clay to Raguet, October 22, 1826, *ibid.*, 1051, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 74.

¹⁷ Raguet to Clay, September 23, 1826, *ibid.*, 30; or American State Papers, Foreign Relations, VI, 1032.

¹⁸ Adams's annual message to Congress, December 5, 1826, American State Papers, Foreign Relations, VI, 212.

later by news of the President's message, causes of complaint multiplied rapidly. Many vessels had been detained and few had been either condemned or released. Judicial procedure was unaccountably and, he thought, inexcusably and intentionally delayed. To review the cases of the individual ships and individual seamen which called for protests and reclamations by him and the commanders of the United States naval vessels, and furnished occasions for numerous lengthy replies, explanations, and defenses by Brazilian ministers and admirals would require scores of pages. It is surprising to see the breadth of the knowledge of international law and the wide familiarity with the classic authorities and great judicial decisions in that interesting field of study displayed on both sides of the wordy controversies.¹⁹ Raguet's impatience got the better of his judgment. To one of the Brazilian Foreign Minister's polite but unsatisfactory replies to Raguet's vigorous denunciations, the former appended a regret at the acrimonious language of the latter and expressed a hope that in the future he would use more moderation.²⁰ On the same day Raguet wrote Clay that his patience was exhausted and that he hardly considered the Brazilians a civilized people. He said they had taken great offense at his communications and he would not be surprised if they should refuse to receive them. In such an event he would leave the country.²¹

An entirely new weapon had been employed by the Brazilian authorities to prevent neutral vessels from running the blockade. So many had obtained clearances from Brazilian ports and then gone to Buenos Aires and carried supplies, sometimes of Brazilian origin, that the local authorities of Montevideo had adopted the practice of requiring all merchant ships clearing from that port, whatever their destination might be, to give bond equal to the value of the ship and cargo not to visit any of the ports of the Buenos Airean Republic.

¹⁹ See numerous documents in American State Papers, Foreign Relations, VI, 289-293 and 1026-1078, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 18-137.

²⁰ Minister of Foreign Affairs to Raguet, October 31, 1826, *ibid.*, 63, or American State Papers, Foreign Affairs, VI, 1046.

²¹ Raguet to Clay, October 31, 1826, *ibid.*, 1042, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 53.

This invention was approved by the superior authorities at Rio de Janeiro and later increased to twice the value. This was a great hardship on United States merchant vessels, since the captains and supercargoes frequently were unacquainted with any one in the Brazilian ports, hence could not give the bonds, and so had to lie in port indefinitely. Raguet and the United States naval commanders protested, at first feebly and then more vigorously and acrimoniously. Ultimately the requirement was suspended so far as it affected United States shipping.²²

The ineffectiveness of the blockade had from the beginning given color to Raguet's complaints of its illegality. Early in 1826 he wrote Clay that no ship with a knowledge of the existence of the blockade had failed to find its way into Buenos Aires if it chose to enter. Those stopped and warned off, he said, were all ordered to Montevideo, in order, no doubt, to be forced to give bond or remain in port. The Brazilian Admiral Lobo, first in command of the blockading squadron, was superseded by Admiral Pinto Guedes, whose title was Baron do Rio da Prata, because, Raguet thought, the former had not been as vigorous in enforcing the blockade as the authorities at Rio de Janeiro wished him to be.²³ Admiral Brown, in command of the Buenos Airean squadron, often kept the Brazilian admirals too busy to permit them to attend to the matter of the blockade.

It was frequently urged that "If the blockading force be withdrawn for any cause other than distress [sic] of weather, or if it appears that vessels have frequently entered and departed, the party accused

²² *Ibid.*, 138 and subsequent pages, or American State Papers, Foreign Relations, 291 and 1080, and pages following each.

²³ Raguet to Clay, April 12, 1826, House Ex. Doc. No. 281, 20th Cong., 1st sess., 20, or American State Papers, Foreign Relations, VI, 1027. It is interesting to notice that the second admiral appears under four or five different names in the documents. Sometimes he is mentioned as Admiral Pinto; other times, as Admiral Guedes. In the present paper, as has been seen in earlier footnotes, both names are used, and, where confusion is likely, the abbreviated title. He always signed by his title in Portuguese — Baron do Rio da Prata — and the translations of his letters are copied without translating. But the copies of letters addressed to him have the title partly translated into English and partly into Spanish and partly elided, — Baron of the La Plata. (Strange to say, neither of the two possible all-English forms have been encountered — Baron of the River Plate, or Baron of the River of Silver.)

has the right of acquittal."²⁴ In December, 1827, Biddle, of the United States naval patrol, told the Brazilian admiral it was an accepted principle that if the vigilance of the blockading fleet is released so as to render ingress and egress comparatively easy and safe the blockade is invalid, and declared that far more vessels entered Buenos Aires without capture than were captured. He expressed a hope that the admiral would see fit to release the vessels captured rather than incur the penalty for illegal capture.²⁵ Pinto Guedes replied, with some justice; that Biddle was availing himself of the arms of generosity to offend the generous; and that in comparing the number of those captured and those that entered blockaded ports all of those warned away should be counted with the former, since they would have been captured if the generosity of the Brazilian Government had not induced it to concede to the United States a privilege which it did not recognize as established in international law.²⁶

Another practice was strenuously objected to. The United States representatives learned that certain Brazilian vessels had been licensed to carry goods to a certain port of the United Provinces, thus violating the blockade by express permission of the blockading Power. In case a certain captured vessel should be detained and brought to trial, Biddle declared that he would contest the legality of the capture on the three following counts:

1st, the order . . . exacting . . . bonds conditioned not to enter a blockaded port, thereby admitting that the force employed had not been able to maintain the blockade; 2d, a list of vessels under the Brazilian flag, licensed by the Brazilian authorities to trade with one of the blockaded ports, thus raising the blockade as to its own subjects while keeping it on as to neutrals; 3d, a list of vessels, both

²⁴ Raguet to Clay, May 25, 1826, *ibid.*, 1028, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 21; Biddle to Pinto Guedes [Da Prata] April 19, 1827, *ibid.*, 154, or American State Papers, Foreign Relations, VI, 1087, and same to same, April 22, 1827, pages 158 and 1089 of the volumes cited, respectively; Da Prata [Pinto Guedes] to Biddle, April 23, 1827, pages 160 and 1089 of the volumes cited.

²⁵ Biddle to Pinto Guedes [Da Prata], December 13, 1827, American State Papers, Foreign Relations, VI, 1105, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 194.

²⁶ Da Prata to Biddle, December 14, 1827, *ibid.*, 196, or American State Papers, Foreign Relations, VI, 1105.

of commerce and of war, which have entered and departed the ports of Buenos Aires, the number of which is so large as to prove that the danger from the blockading squadron is not such as the law of nations requires, in order to constitute a blockade.²⁷

Early in 1827 Raguet reported a prospect for happier relations. A new Minister for Foreign Affairs had succeeded the one who Raguet thought was largely responsible for the delays. The new Minister replied in quick succession to several letters, which had for considerable time remained unanswered, and showed a conciliatory attitude. He said that the Emperor expected to relax the rigor of the blockade. A few days later, in an enthusiastic letter to Clay, Raguet declared that several vessels recently captured and sent in had been at once released, and that seamen were receiving courteous and considerate treatment; and he believed an era of happy relations was dawning. A few days after this change for the better had begun, a copy of the President's message of December 5, 1826, referred to above, arrived and, Raguet said, created a sensation. Some took it to mean war with the United States unless concessions were made. He had been told that the Emperor had told the Foreign Minister that the differences with the United States must be settled. All interested in neutral commerce welcomed the President's declarations, even the English merchants, who received little support from their government. At about the same time Biddle was reporting from Montevideo that the blockade was then being conducted in such a way as to leave no room for complaint.²⁸

But the happy relations of January and February, 1827, were only the calm preceding a storm which broke in March, on the 12th of which month Raguet wrote that it became his painful duty to report "that one of the most deliberate and high-handed insults against our flag and national honor has recently been committed by the express orders

²⁷ Biddle to Pinto Guedes [Da Prata], January 25, 1828, *ibid.*, 1111, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 209.

²⁸ Minister of Foreign Affairs to Raguet, January 18, 1827, and two other letters from same to same on same day, Biddle to Secretary of the Navy, January 24, 1827, and Raguet to Clay, February 7, 1827, American State Papers, Foreign Relations, VI, 1054, 1057, 1058, 1074, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 80, 88, 90, 126.

of this government." He thought the insult had been deliberately arranged many days beforehand when professions of friendship for the United States were being made. The *Spark*, which had formerly been a United States warship, had reached Rio de Janeiro on January 27, and had been offered for sale to the Brazilian Government. That government refused to purchase the vessel but did wish to buy her guns, of which there were ten on board, although her clearance called for but four. The captain was informed that he would not be permitted to depart with these extra guns, and after consulting with Raguet he landed them. With the rest of its equipment he cleared for Montevideo on March 4. After reaching the open ocean the vessel was stopped by a Brazilian man-of-war, manned by a prize crew, and brought back into the harbor amid the plaudits of the populace, who hailed the capturing vessel as a victor. The officers and crew of the *Spark* were confined, taunted with being pirates, and mistreated, and the captors even offered their share of the prize proceeds for sale, so confident were they that she would be condemned.

Raguet demanded of the Minister of Foreign Affairs an explanation of such conduct. At almost the same time a demand came to him for an explanation of the irregularities which the Brazilian Government claimed to have discovered in the character and conduct of the *Spark*. This vessel, true to its name, was the "spark" which fired the long train of Raguet's explosive diplomatic communications. The Brazilian ministers suspected or, as Raguet said, pretended to suspect that she was a privateer on her way to enter the Buenos Airean service. In addition to the fact of having brought to Rio de Janeiro the extra guns, which she had been compelled to leave, the Brazilian Government discovered, after her departure, it was claimed, that the *Spark* had doubled the number of her seamen before departure. To the Brazilian demand Raguet replied brusquely that had explanations been asked before the departure of the *Spark* he "would most cheerfully have lent his aid in causing those suspicions to be removed. In the present state of the affair, however, he declines giving any explanations." The Foreign Minister tried to convince Raguet of the correctness with which the Minister of Marine had acted in arresting the *Spark* and to persuade him that there was no intention of interrupt-

ing friendly relations with the United States. It was in the hope of avoiding the necessity for a judicial investigation, he concluded, that "the undersigned addressed to him a note which has drawn from him a negative and rude reply."

Before the Foreign Minister's explanation and mild reproof had reached Raguet, even the day before it had been written, the latter addressed another curt note to the former, saying that "recent occurrences induce him to withdraw from the court of Brazil, and he therefore requests that his excellency will furnish him with the necessary passports." A reply came promptly, saying that the Emperor was surprised at Raguet's precipitous request for his passports, "couched in abrupt and vague language," without explanation of reasons; but he had ordered the passports to be delivered, and Raguet would be answerable to his own government for the consequences. In his explanations to Clay, Raguet said the real motive of the government was its fear that the ship would be sold at Buenos Aires and its determination to prevent her acquisition by Brazil's enemy. The Minister of Marine had declared that the vessel would not be permitted to depart with more seamen than she brought nor without giving bond that she would not be sold to the enemy. Rather than comply with these conditions, the captain decided to abandon the ship to the Brazilian Government. The increases in the number of seamen he declared to be necessary because it required many more to man a vessel in the rough waters of the Rio de la Plata or around the Horn than in the calm equatorial seas north of Rio de Janeiro. In concluding his apology to the government at Washington, Raguet declared:

So strong and decided a measure as the one which I adopted as the *ultimo ratio* of a people which sincerely desires to preserve the relations of peace with all the world upon honorable terms could not, as you may suppose, have been regarded by myself or others as an unimportant act. I am aware that I have taken upon myself a responsibility of no ordinary character, and am prepared to meet all the consequences, even though one of them should be my being offered up as a sacrifice at the altar of public good.²⁹

²⁹ Raguet to Minister of Foreign Affairs, March 5, 7, and 8, 1827; Minister of Foreign Affairs to Raguet, March 7, 9, and 10, 1827; Raguet to Clay, March 12 and 17, 1827; American State Papers, Foreign Relations, VI, 1061-1066; or House Ex. Doc. No. 281, 20th Cong., 1st sess., 96-108.

As copies of Raguet's increasingly acrimonious notes to the court at Rio de Janeiro came to the Department of State at Washington, and long before the exploding point was reached, Clay and Adams concluded that it was necessary to restrain him. On January 20, 1827, Clay wrote him that the perusal of parts of his dispatches had "occasioned the President the most lively regret." While the commerce of the United States had undoubtedly been subjected to serious annoyances by the Brazilian blockade, redress ought to be sought, he said, in "language firm and decisive, but at the same time temperate and respectful. No cause is ever benefited by the manifestation of passion, or by the use of harsh and uncourteous language." The case of the *Ruth*, one of the vessels against the Brazilian treatment of which Raguet had remonstrated vigorously, was, Clay continued, deserving of his zeal; but the President believed it would have been better "to have abstained from the use of some of the language which you employed. . . . No nation claiming to be civilized and Christian can patiently hear itself threatened to be characterized as an uncivilized people." The President made great allowances, "but he would have been better satisfied if you had never allowed yourself to employ, in your intercourse and correspondence with the Brazilian Government, provoking or irritating expressions." Concerning Raguet's expressed belief that the court at Rio de Janeiro might decline further communication with him because of his language, Clay said: "The President hopes that such will not be the termination of your mission; and he desires that you should, in future, whilst you assert with dignity, decision, and promptitude, all our rights, carefully avoid any just dissatisfaction in the particular which it has been my painful duty to call to your attention." Concerning Raguet's request, previously mentioned, for instructions to demand the release of vessels under a threat of severing diplomatic relations, Clay told him:

With respect to the nature of instructions which may be sent to you, and of orders to the commanders of our public vessels, that must rest with the President, where the Constitution has placed it. If those instructions or orders do not correspond in all respects with your wishes or expectations, you must recollect that he is enabled, at this distance, to take a calmer view of things than you are;

that we have relations with other nations besides those which exist with the Brazils; and that, even if we had not, war or threats of war ought not to be employed as instruments of redress until after the failure of every peaceful experiment.³⁰

This reproof reached Raguet too late to prevent the rupture. When, in May, news reached Washington of his demanding and obtaining his passports, President Adams entered in his private diary: "He appears to have been too hasty in his proceedings, and has made us much trouble, from which we can derive neither credit nor profit." After he and Clay had gone over the correspondence he declared: "We concurred in the opinion that Raguet could not be sustained."³¹ Rebello, the Brazilian chargé at Washington, hastened to say that he hoped the United States Government would disapprove the conduct of Raguet and that a new representative might be appointed soon to adjust the pending disputes. Clay's reply did not express disapproval, but said that Raguet's act was personal and that relations at Washington had not been interrupted by it. He said the President regretted that reparation had not been made for Brazil's frequent illegal interference with the commerce of the United States, and would have been pleased to receive from Rebello a proposal for a settlement. A new representative to Rio de Janeiro would be appointed provided Rebello would give assurance that he would receive the consideration due to his official character and that a prompt and satisfactory arrangement would be made concerning the pending disputes. In his reply of the next day Rebello said he felt himself authorized to say that indemnity would be promptly afforded for injuries contrary to public law. William Tudor was appointed, went to Rio de Janeiro, and, Adams says later, "negotiated an excellent treaty of commerce with Brazil, and obtained indemnity for numerous injuries committed by Brazilian officers during their war with Buenos Aires, which had been much aggravated by the rashness and intemperance of Condé Raguet, . . . [who had] brought this country and Brazil to the very verge

³⁰ Clay to Raguet, January 20, 1827, *ibid.*, 108, or American State Papers, Foreign Relations, VI, 1066.

³¹ Adams, C. F., *Memoirs of John Quincy Adams*, VII, 270, 272.

of war."³² Until the end of the war in 1828 the causes of complaint continued to accumulate, however.³³

There were causes of complaint and also intemperate language coming from the other side, too. Many vessels fitted out in the United States, manned and commanded by citizens of the United States, had obtained from the Government at Buenos Aires commissions as cruisers, and preyed on Brazilian commerce. Some of their prizes were brought into United States ports for adjudication and awarded to the captors. Rebello protested against what he thought was partiality shown to the Government of the United Provinces of the Rio de la Plata, because, he supposed, it was republican in form while his own was monarchical. His denunciations grew too vigorous to suit the diplomatic tastes of Clay and Adams. Perhaps they grasped at an opportunity to charge him with being undiplomatic as a sort of counter-irritant to the charges of his government against Raguet. In his entry for November 15, 1827, Adams says that Clay had left with him a letter from Rebello which "is in language highly offensive, complaining of the partiality of the people of the United States against the Emperor of Brazil in his war with Buenos Aires, and of republican intolerance." On the next day he says he and Clay were agreed that the offensive note ought not to be received. The latter was to suggest changes to Rebello and permit him to make them and present it again. If the suggested changes should be refused, the note would be sent back to him and a demand be made for his recall. A few days later Adams remarks that, after conversation with Clay, Rebello had taken back his offensive note.³⁴

Shortly after Raguet reached the United States he called, in company with Clay, on President Adams, who says of the interview: "I

³² Adams, C. F., *Memoirs of John Quincy Adams*, VII, 276, VIII, 224; Rebello to Clay, May 30 and June 1, 1827; Clay to Rebello, May 31 and June 2, 1827; *American State Papers, Foreign Relations*, VI, 823-825, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 6-8.

³³ See numerous documents which passed between the United States naval commanders and the Brazilian admiral, and between the United States consul at Rio de Janeiro and the ministers, in *American State Papers, Foreign Relations*, VI, 1071-1121, or House Ex. Doc. No. 281, 20th Cong., 1st sess., 118-232.

³⁴ Adams, C. F., *Memoirs of John Quincy Adams*, VII, 354-357.

told him that my opinion of his integrity, patriotism, and zeal was unimpaired; that I was convinced of the purity of his motives to the step he had taken; but that I had thought it would have been better if he had, before taking that step, consulted his government.”³⁵ In his annual message of December, 1827, after telling of the disturbed relations with Brazil due to events growing out of the inadmissible practices of the Brazilian commanders in enforcing the blockade, Adams said the chargé had left in protest because his representations in behalf of United States citizens had been disregarded, and concluded his comment on the episode: “This movement, dictated by an honest zeal for the honor and interests of his country — motives which operated exclusively on the mind of the officer who resorted to it — has not been disapproved by me.”³⁶ To a senator from Pennsylvania who in January, 1828, went to Adams to solicit another appointment for Raguet, Adams declared that because he thought Raguet was sincere and his motives were good, no public censure had been passed either in the message to Congress or in the communications with Brazil. “But to replace in diplomatic service abroad a man of such a temper and want of judgment, who took blustering for bravery and insolence for energy, was too dangerous.”³⁷

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³⁵ Adams, C. F., *Memoirs of John Quincy Adams*, VII, 288, 289. Raguet to Clay, May 31, 1827, *American State Papers, Foreign Relations*, VI, 1068, or *House Ex. Doc. No. 281*, 20th Cong., 1st sess., 112.

³⁶ Adams's annual message, December 4, 1827, *American State Papers, Foreign Relations*, VI, 627.

³⁷ Adams, C. F., *Memoirs of John Quincy Adams*, VII, 401.

After Raguet's departure from Brazil, a statement was published in a paper of Rio de Janeiro charging that he had been bribed by agents of Buenos Aires to break off the relations between the United States and Brazil. In a communication to the House of Representatives of February 15, 1828, Raguet declared this to be an unfounded libel, and asked for an investigation. On March 25 the Committee on Foreign Affairs reported that, while they sympathized with Mr. Raguet's feeling of indignation, they thought an unavowed newspaper attack on a foreign agent not sufficient ground for the House to take action. They considered the statement of the President to Congress at the opening of the session sufficient vindication. *American State Papers. Foreign Relations*, VI, 864, 865.

THE HELLENIC CRISIS FROM THE POINT OF VIEW OF CONSTITUTIONAL AND INTERNATIONAL LAW

PART III

THE third part of the essay on the Hellenic Crisis,¹ which has happily received a satisfactory solution, will deal with the incidents which are connected with the law of nations and inquire as to how far the European belligerents in their dealings with Greece, and the Greek Government in its relations with them, adhered to the tenets and usages of international law.

The points to be here discussed are of a manifold character.

First, it will be examined whether the serious charge made by the Entente Powers against Constantine, the ex-King of the Hellenes,² that he violated the obligations arising out of the Treaty of Alliance between Greece and Serbia, by which the two states bound themselves to assist each other for the defense of their respective territories in case of attack by a third Power, and particularly by Bulgaria, is well founded according to the letter and spirit of the instrument of alliance.

Secondly, whether the military occupation of portions of the territory of the Hellenic Kingdom by both sets of belligerents, the seizure of its war material and other public property, and particularly the coercive measures employed by the Entente Powers against the Government and people of Greece and their forcible intervention in the internal affairs of that country, can be justified either by reason of treaty stipulations or on account of the unneutral conduct of the then King and his government towards the Entente Allies. The first point to be examined is the obligation arising out of the treaty of alliance between Greece and Serbia.

¹ See Parts I and II in this JOURNAL for January and April, 1917.

² The word "King" embodied, then, the government, because the two words during the short reign of that potentate — with the exception of the interval of the Venizelos Cabinet — were synonymous. See *ibid.*, Parts I and II.

THE GRECO-SERBIAN TREATY OF ALLIANCE

After the first Balkan War of 1912-1913 Greece and Serbia, being apprehensive lest their then ally Bulgaria, flushed with victory against the Turks and laboring under the dream of hegemony in the Balkan peninsula, should attack them in order to settle by the sword, on one hand, her territorial differences with Serbia, and on the other to snatch from the hands of Greece the much coveted city of Salonika³—the pearl of Macedonia—concluded in June, 1913, a defensive alliance in order to ward off the then impending Bulgarian aggression.

The Greco-Serbian Alliance had, strictly speaking, a double object: The first aim of the contracting parties was to protect themselves against the expected attack of their ally Bulgaria. The second, which particularly concerned Serbia, was to forestall another danger from another Power than Bulgaria, namely, Austria-Hungary, and in such contingency to rely on Greece if attacked simultaneously by the army of Tsar Ferdinand. It also concerned Greece, in order to insure the assistance of Serbia, in case, being attacked by Turkey, she had to face also a Bulgarian aggression.

In both cases the cardinal object of Greece and Serbia was the preservation and consolidation of their territorial acquisitions made in consequence of the war with Turkey which were then in their actual possession or military occupation. The dual alliance is embodied in two diplomatic instruments, namely, the Treaty of Alliance proper and the Military Convention,⁴ both bearing the date of May 19, 1913 (Old Style), namely, June 1, 1913.

The preamble of the Treaty of Alliance sets forth in an abstract manner the reason which actuated the contracting parties to conclude an alliance, namely, that they consider it "a duty to look after

³ This apprehension became a conviction after the sudden attack in the beginning of May, 1913, of the Bulgarians against the Greek troops stationed at Mount Panghaion in eastern Macedonia.

See Greek White Book, Document No. 5.. English translation in Supplement to this JOURNAL, p. 101.

⁴ English translation of texts, Greek White Book, Docs. Nos. 2 and 4, in Supplement to this JOURNAL, pp. 89, 96.

the security of their people and the tranquillity of their kingdoms" and furthermore a "firm desire to preserve a permanent peace in the Balkan peninsula." The two allies distinctly declare that their agreement is of a purely defensive character and therefore promise each other never to give to it "an offensive character."

After this preliminary explanation, the two contracting parties agree to guarantee "mutually their possessions" and to afford assistance to each other with all their armed forces in case one of them is "attacked without any provocation on its part." Furthermore, in anticipation of trouble with Bulgaria as to the division of the territories conquered from Turkey, the two contracting parties agree "not to come to a separate understanding with Bulgaria," "to afford each other a constant assistance," and to "act always together supporting mutually their territorial claims."

One of the most important provisions of the treaty is that dealing with the determination of the two parties to have a common boundary line, an arrangement objectionable both to Austria and to Bulgaria. After these declarations, the boundary lines which were to separate the three states, namely, Greece, Serbia, and Bulgaria, are minutely fixed "on the basis of the principle of actual possession and the equilibrium between the three states."

By the fifth article, the contracting parties, after providing for reference to mediation or arbitration of their contingent differences with Bulgaria in regard to the delimitation of their respective boundaries, agree that in case "Bulgaria should refuse to accept this manner of peaceful settlement" and "assume a menacing attitude against one of the two Kingdoms" or "attempt to impose her claims by force," the two allies bind themselves solemnly to afford assistance to each other with all their forces. They further agree by Article 6 to conclude a military convention "for the preparation and securing of the military measures of defense" of the two countries.

After referring to some other features of the treaty, with which we are not here concerned, the contracting parties agree that the instrument will have binding force for ten years, and according to the terms provided for in Article 10, it can not be denounced before the expiration of this period.

The second instrument, namely, the Military Convention, deals specifically with the contingencies in which the *casus foederis* of the alliance would arise, the number of troops to be furnished in such a case by each contracting party, the manner in which the military operations should be conducted by the allied armies, and furthermore refers to the benevolent neutrality to be maintained by one of the parties in case the other declares war against Bulgaria or another Power.⁵ By a special provision (Article 7), a delimitation of their respective boundaries is made, assigning to each party certain territories, and by other clauses various other questions pertaining to military operations, armistice, revictualing, commandeering, the war booty, sanitary and other matters, are dealt with in some detail (Articles 8-11). It is further stipulated that the duration of the Military Convention depends upon that of the Treaty of Alliance and that therefore the former shall continue to be in force "as long as the alliance between Greece and Serbia, of which it forms a complement, remains in force." (Article 12.)

The first aim of the alliance, namely, that regarding the warding off of the implied Bulgarian attack, is covered by the general provisions of Article 1 of the Treaty of Alliance, and specifically by Articles 1 and 4 of the Military Convention. In fact while Article 1 of the treaty deals with the obligation of the contracting parties to afford each other military assistance in case one of them is attacked without provocation on its part, Articles 1 and 4 of the convention mention distinctly Bulgaria. Thus, by Article 1 of the latter instrument, "in case of a sudden attack by considerable forces — at least two divisions — of the Bulgarian army against the Hellenic or Serbian army," the contracting parties "promise to each other mutual military support, Greece with all her land and sea forces, and Serbia with all her land forces." But Article 4 also of the convention is not less explicit when it foresees the contingency of an attack by Bulgaria, while one of the two allies is "found in the necessity of defending" itself "against an attack of a Power other than Bulgaria."

⁵ English translation of texts, Greek White Book, Doc. No. 4, Supplement, p. 96.

The second aim sought by the alliance, namely, the protection from aggression of another Power than Bulgaria, is provided for by the general terms of Article 1 of the treaty, and is particularly dealt with in two articles of the Military Convention. Thus, Article 1 (of the convention) deals with the case of war "between one of the Allied States and a third Power" and Article 4 (of the same instrument) refers to the case of either contracting party defending itself against an attack of a Power other than Bulgaria. In both cases Greece and Serbia are under the obligation to afford military assistance to each other.

It should be noted that, although according to the letter of the Military Convention (Article 1) both parties are bound to assist each other if attacked by a third Power, still the tendency of the Greek Government has been to consider that the obligation of the mutual aid depended on the participation also of Bulgaria in such a conflict and taking the offensive against one of the contracting parties; that, therefore, either of them could remain neutral in the absence of the latter contingency.⁶

That the object of these agreements between Greece and Serbia was the preservation of their territorial acquisitions during the war with Turkey, and generally their actual possessions, is evident from the express terms of Article 1 of the Treaty of Alliance, where it is distinctly stated that the "high contracting parties agree expressly to a mutual guarantee of their possessions." Besides, the general tenor and spirit of both instruments show that that was the predominant character of their agreements, the other obligations being a corollary or supplementary arrangement for the benefit of both or one of the parties. To the latter category belong the privileges granted by Greece to Serbia in regard to the export and import trade of Serbia through the port of Salonika and in some of the railway lines in Greek Macedonia.⁷

⁶ Speech of Mr. Venizelos in the Boulé on October 4, 1915, in supplement to *Patris*, pp. 8, 9.

⁷ It should be noted that there was always a friendly feeling between the Serbians and Greeks (unlike that between the latter and the Bulgarians) long before the existence of the Serbian and Greek states, as is attested by the history

Such are the general terms of the Treaty of Alliance and the Military Convention concluded between Greece and Serbia in June, 1913, about a month previous to the outbreak of the second Balkan War of 1913.

The *casus foederis* arose for the first time when, on June 29, 1913, the Bulgarian army began simultaneously the invasion of the territories then under the military occupation of Greece and Serbia, ceded by Turkey to the three allies, namely to Greece, Serbia, and Bulgaria, by the Treaty of Peace of London of May 30, 1913. The provisions both of the Treaty of Alliance and the Military Convention were then fully carried out by both contracting parties, resulting in the defeat of Bulgaria and the signature of the Treaty of Bucharest of August 10, 1913.

During the course of the present world war the interpretation or construction to be given to these diplomatic documents became the bone of contention between Constantine, the former "constitutional" King of the Hellenes, and Mr. Venizelos, the leader of the Liberal Party of Greece. The one, namely, the then King (and his nominees), contended that the words "third Power" contained in the Military Convention referred exclusively to a Balkan state and not to any other Power; and consequently that the alliance is of a restrictive character, having in view a Balkan and not a European

of both countries. As a matter of fact, had it not been for the murder of the Serbian hero, Kara George, in 1817, the ancestor of the present King Peter, the Serbian people at that time would have probably participated in the war against Turkey, during the war of Greek Independence, as an agreement had been reached at Bucharest between Kara George and the agents of the Greek revolutionary committee in that city. (I. Paparregopoulos, *Istoria tou Hellenikou Ethnous*, 1887, Vol. V. pp. 698-699.)

In 1867 an offensive and defensive alliance was concluded between Greece and Serbia with the view of waging war against Turkey in order to liberate from the Ottoman yoke some of the Turkish provinces inhabited by Serbians and Greeks, but the plan was not carried out on account of the military weakness of both states. (O. Popovic in *New Europe*, No. 22, March 15, 1917, p. 267.)

This friendly feeling was continued and maintained not only between the governments and people of Greece and Serbia proper, but also between the Serbians and Greeks in the Macedonian provinces of Turkey, where during all the troublesome times of that unhappy country, they lived in perfect amity and peace.

war.⁸ The other,⁹ namely, Mr. Venizelos, and the great majority of the nation (the result of the elections of June, 1915, attesting this fact) asserted that the "third Power" there referred to meant any Power, and particularly Bulgaria; that the declaration of war by the latter Power against Serbia left no doubt whatever about the *casus foederis*, which is expressly provided for in the instruments; and that, therefore, it was the duty of Greece to carry out her treaty obligations and to come to the assistance of Serbia with all her military and naval forces when the latter was attacked by Bulgaria while she was engaged in a war with Austria-Hungary.

As, after the signature of the Treaty of Bucharest, the defensive alliance between Greece and Serbia continued to be in full force, the Serbian Government, on the eve of the invasion of her territory by the Austro-Hungarian troops, namely, on July 25, 1914, inquired of the Greek Government whether it could count on the armed forces of Greece, first, in case Serbia was attacked by Austria, and secondly, in case she was attacked by Bulgaria.¹⁰ When this question was put to the Greek Government, the Prime Minister, Mr. Venizelos, was absent from Athens, and the then Minister for Foreign Affairs of Greece, Mr. G. Streit, who played such a prominent part in the recent events as the confidential adviser of Constantine, after obtaining by telegram Mr. Venizelos's view,¹¹ instructed the Greek Minister at Belgrade to declare to the Serbian Government that

⁸ See interview of the London *Times* correspondent with Constantine in *Times* of December 7, 1915; also, "apology" of his brother Nicholas on the same subject in the *Temps* of February 20, 1916, and in the *Daily Telegraph* of April 7, 1916.

⁹ Mr. Venizelos has repeatedly admitted the binding character of the alliance upon Greece in the present war. See particularly his interviews with the London *Times* correspondent in the *Times*, December 11, 1915, and November 21, 1916; with the editor of *Eleutheros Typos* quoted by the *Daily Telegraph* and the *Morning Post*, November 7, 1916; his speeches in the Boulé, October 4, 1915, in supplement to *Patris*, pp. 7 *et seq.*, and August 27, 1917, published in the original in supplement to *Patris*, *Eleutheros Typos*, *Hestia*, *Ethnos*, and *Drassis*, pp. 83, *et seq.*, and in French entitled *Cinq Ans d'Histoire Grecque, 1912-1917*, by Léon Maccas, pp. 1 *et seq.*; also speech to the Athenians on January 4, 1918, in *National Herald* (Greek newspaper of New York) of February 24, 1918; see also *Keryx*, No. 4 (Mr. Venizelos's mouthpiece), March 27 (o.s.) 1916, and numerous other instances.

¹⁰ Greek White Book, Doc. No. 12, Supplement, p. 109.

¹¹ *Ibid.*, Doc. No. 14, Supplement, p. 111.

independently of the obligations resulting from the alliance between the two countries, as the independence and the territorial integrity of Serbia "constituted an essential factor of the Balkan equilibrium established by the Treaty of Bucharest, to the maintenance of which Greece was firmly and resolutely attached, it was sufficient to suggest to the Hellenic Government the resolution which it should adopt, at least for the present, in order to aid in the most effective manner the friendly and allied nation."

"The Royal Government," continued the Greek Minister, "has the conviction that it fully fulfills its duty as a friend and ally . . . by maintaining towards Serbia a most benevolent neutrality and by being ready to repel any attack against Serbia on the part of Bulgaria."

Furthermore, he said that the participation of Greece in the war at that time, far from being useful to Serbia, would in fact be very prejudicial, inasmuch as, in such a case, Greece could offer to her ally but very feeble forces in comparison with those of Austria-Hungary and would at the same time make Salonika, the only open port for the revictualing of Serbia and furnishing of supplies, the target of Austrian attacks; and in fine, that the entrance of Greece into the war at that time would weaken her armed forces, which ought to be maintained intact for the common interests of Greece and Serbia in order to repel a Bulgarian aggression, which Greece was ready to do.¹²

¹² See Greek White Book, telegram of July 20, 1914, containing instructions from Mr. Streit to Mr. Alexandropoulos, Minister of Greece at Belgrade, Doc. No. 18, Supplement, p. 114. For further evidence that Greece was firmly committed to this policy, see declaration of Mr. Streit, Minister for Foreign Affairs of Greece, to Chargé d'Affaires of Germany at Athens, in telegram of July 11, 1914, (o.s.) *ibid.*, Doc. No. 11, Supplement, p. 108; also, declaration of Mr. Theotoky, Minister of Greece at Berlin, to Von Jagow, then Minister for Foreign Affairs of Germany, in telegram of July 12, 1914, *ibid.*, Doc. No. 13, Supplement, p. 110; telegram of July 15, 1914, of Mr. Streit to Mr. Theotoky, *ibid.*, Doc. No. 16, Supplement, p. 112; telegraphic circular of August 31, 1914, containing declaration of Mr. Venizelos to the Minister of Germany at Athens, *ibid.*, Doc. No. 26, Supplement, p. 121; communiqué of the Gounaris Cabinet in Greece of February 25, 1915, declaring that Greece will carry out her treaty obligations, *ibid.*, Doc. No. 28, Supplement, p. 123; telegram of February 28, 1915, from Mr. Zographos, Minister for Foreign Affairs of the latter Cabinet, to Mr. Alexandropoulos, Minister at Belgrade, instructing him to assure Serbia

Mr. Venizelos, on his return to Athens in August, 1914, having discovered that Mr. Streit was following secretly an entirely pro-German policy, compelled him to resign and assumed himself the duties of the Foreign Office. Therefore, on August 21, 1915, he sent a circular to the Ministers of Greece accredited to the Entente Powers, instructing them to repeat the declaration he had already made to the German Minister at Athens, namely, that "it would be impossible for Greece to be an indifferent spectator in an attack by Turkey and Bulgaria against Serbia and that, besides, her interests, her obligations of alliance oblige her to hasten to the defense of Serbia" in case the latter was attacked.¹³

The Serbian Government, after receiving the reply to her note of July 25, 1914, seemed to be satisfied with the explanations given by the Greek Government in regard to the policy to be followed by Greece in the war, and declared that the assistance promised by the Greek Government, as outlined in the note, corresponded entirely with the treaty obligations of that country.¹⁴

This line of conduct by Greece at that time not only did not embitter the relations between the two allies, but, on the contrary, as the result showed, it proved to be the best policy to be followed under the circumstances, inasmuch as the Greek Government helped

that Greece is attached faithfully to the Treaty of Alliance, *ibid.*, Doc. No. 29, Supplement, p. 123; telegraphic circular of July 20, 1915, sent by Mr. Gounaris, then Premier and Minister for Foreign Affairs, to the Greek legations of both the Entente and Central Powers, *ibid.*, Doc. No. 31, Supplement, p. 124; telegram of August 21, 1915, by Mr. Venizelos, then Prime Minister, to Mr. Theotoky, Minister at Berlin, *ibid.*, Doc. No. 32, Supplement, p. 125.

On October 18, 1914, Mr. Theotoky, the Minister of Greece at Berlin, in a dispatch to Mr. Venizelos, gave an account of an interview he had with Mr. Zimmermann, then Undersecretary for Foreign Affairs of Germany, who advised Greece not to intervene in the war even if Bulgaria attacked Serbia. In reply to the observation of Mr. Theotoky that Greece was bound to Serbia by a treaty of alliance, Mr. Zimmermann, in imitation of Chancellor Bethmann-Hollweg's famous expression "scrap of paper," told the Greek Minister that treaties had very little value at the present time. *Ibid.*, Doc. No. 27, Supplement, p. 122.

¹³ *Ibid.*, telegraphic circular dated August 31, 1914, to the Ministers of Greece, accredited to the Entente Powers and to Roumania, Doc. No. 26, Supplement, p. 121.

¹⁴ See speech of Mr. Venizelos of October 4, 1914, in supplement to *Patris*, pp. 9-10; also "Greece in Her True Light," speeches of Mr. Venizelos translated by Mr. Socrates A. Xanthaky and Nicholas G. Sakellarios, pp. 49 *et seq.*

her ally Serbia in a very effectual manner by keeping intact the communications between that country and the Mediterranean Sea. In fact, had it not been for these facilities, namely, the transportation from Salonika over the Greek railways in Macedonia of the war material and other supplies furnished to Serbia by the Entente Powers, it is very doubtful, whether the Serbian army, notwithstanding the extraordinary valor which it displayed, could have withstood the first and second onrush of the Austro-Hungarian troops into Serbia. When, coupled with that, one considers the other no less valuable assistance given to Serbia by Greece, namely, of preventing Bulgaria from attacking Serbia by the threat that the Greek Government would, in such a contingency, carry out her treaty obligations towards Serbia and repel any Bulgarian aggression, it may be fairly said that in the beginning of the European War, Greece, then guided by Mr. Venizelos, kept faith with her promises arising out of the dual alliance. Without depreciating the bravery of the Serbian army, it should be conceded that these two factors contributed largely to the crushing defeat of the Austro-Hungarian troops and their expulsion from the Serbian territory during the early part of the war.¹⁵

Serbia then, after expelling the invading Austro-Hungarians from her territory and attempting unsuccessfully to carry on war operations in enemy territory, was compelled to remain for some time inactive, not so much for the purpose of recuperating her forces as in order to combat another not less deadly enemy, namely, the typhus fever, which, in a short space of time, made fearful ravages amongst her gallant troops and people generally. The country had hardly recovered from this fearful disease when an Austro-German army began again to invade Serbian territory. It was at that time (August, 1915) that sinister rumors began to circulate that Bulgaria would also attack Serbia, having already obtained territorial concessions from Turkey. The Prime Minister of Greece was again Mr. Venizelos, his party having carried the elections of June, 1915.¹⁶

¹⁵ See on this point, view of a British correspondent in "Light on the Balkan Darkness" by W. H. Crawford Price, p. 19.

¹⁶ See this JOURNAL, Vol. 11, No. 1, January, 1917, pp. 68-69.

It was then again that the Greek Government promised to keep faith with her ally, Serbia.¹⁷ The stand taken at that time by Mr. Venizelos and his Cabinet on this question was subsequently explained by him in the Boulé on October 4, 1915.¹⁸

While the Greek Government was officially giving such assurances to Serbia and to the Entente Powers, German diplomacy and propaganda (which seem to be interwoven) were undermining, with the connivance and assistance, as it is now proved, of Constantine and his spouse Sophie, Greek public opinion. Again, while, on one hand, Greece was officially pledging herself to come to the assistance of Serbia if attacked by Bulgaria, the King of the "Hellenes" was assuring his brother-in-law Emperor William, and through him Bulgaria, that Greece would not stir or move her finger if the Bulgarians took a fancy to invade the territory of Serbia. In fact, as early as July 17, 1915, the Minister of Greece at Bucharest had informed his government (the Gounaris Cabinet) that Germany had categorically assured Bulgaria that Greece would remain neutral even if Bulgaria attacked Serbia.¹⁹

Towards the end of September, 1915, Greece was brought face to face with the question of war or peace. Everything now indicated that Bulgaria was about to join the Central Powers. The loan made at the time by Germany to Bulgaria confirmed these rumors. While the Cabinet of Mr. Venizelos, with the support of the great majority of the representatives of the nation elected a few months before on the clear issue of carrying out or not the treaty obligations towards Serbia, was in favor of armed intervention in case Bulgaria attacked Serbia, the King and his pro-German tools were moving, so to speak, heaven and earth in order to prevent Greece from fulfilling her pledge towards her ally.

During the interval between the resignation of the Venizelos Cabinet in March, 1915, and its assumption again of power in August, 1915, Constantine and Sophie, with the help of the German propaganda, carried out the nefarious work of the corruption of the

¹⁷ Greek White Book, Doc. No. 26, above quoted.

¹⁸ Supplement to *Patris*, pp. 9 *et seq.*

¹⁹ Greek White Book, Doc. No. 30, Supplement, p. 124.

Greek press, of various public officers, both civil and military, and of persons in every strata of society in order to attain their end, namely, to place no impediment in the triumph of the German arms and, if possible, even to give them effectual aid.

The King of the "Hellenes" did not in the least scruple to sacrifice the interests of the country of which he was the supreme head, in favor of the Hohenzollern family and of Germany.²⁰

The final clash between two principles, the one adhering to the sanctity of treaty obligations and the other discarding them as useless verbiage, came to an end on October 5, 1915,²¹ when Greece violated her sacred covenant with Serbia. The die was now cast and Constantine brushed aside both the constitution and the treaty, throwing them into the royal waste-basket. After the fall of Mr. Venizelos on that date, the King, divesting himself of all constitutional restrictions, assumed full control of both the internal and external relations of the country, and his pliant Prime Minister, Mr. Zaimis, who had succeeded Mr. Venizelos, declared to Serbia, on the eve of the invasion of her territory by the Bulgarian army, that the Treaty of Alliance between the two countries had a Balkan character and that therefore Greece was not bound to assist her ally because the latter was involved in a European war.

The reasons for the nonfulfillment of her treaty obligations by Greece, or better the interpretation given to its provisions by the nominee of the King, are given fully in a state document issued from the Foreign Office of Greece on October 11, 1915.²² In a telegram sent by the Greek Prime Minister, Mr. Zaimis, who also held the portfolio of Foreign Affairs, to the Minister of Greece at Belgrade, the latter was instructed to declare to the Serbian Government that Greece could not accede to its demand and come to the assistance of Serbia if she was attacked by Bulgaria because, according to the view of the Greek Cabinet, the *casus foederis* would not arise in such a case.

²⁰ The deciphered telegrams discovered in Athens after Constantine's departure leave no doubt about his guilt.

²¹ See this JOURNAL, Vol. 11, No. 1, January, 1917, p. 69.

²² Greek White Book, Doc. No. 34, Supplement, p. 126

The first contention of the Greek Minister was that the Treaty of Alliance, which was concluded for the purpose of establishing and maintaining an equilibrium of forces between the states of the [Balkan] Peninsula had, "according to the very preamble of the treaty," "a purely Balkan character" not imposing in the least an obligation upon Greece to assist Serbia in case of a general war, and that notwithstanding the generality of the terms of Article 1, both this instrument and the Military Convention prove that the contracting parties had in view the presupposition of a single-handed attack by Bulgaria against one of them.

It was further argued that Article 4 of the Military Convention confirmed this construction, inasmuch as having been inserted there in order to limit the aid of one of the allies who would have been already occupied elsewhere, it foresees as a *casus foederis* only the attack of Bulgaria against one of them, and that nowhere is any mention made of a combined attack of two or more Powers; that, on the contrary, notwithstanding the generality of Article 1 of the Military Convention, it is restricted to the supposition of war between one of the allied states and only one other Power; that besides, according to Mr. Zaimis, "it would have been an act of foolish conceit" for the allies to agree in the contingency of war by one of them with many Powers at the same time "to the grant of an evidently feeble and ridiculous assistance of the military forces of the other party." * The royal nominee said furthermore that such was then exactly the case; that if Bulgaria attacked Serbia, she would do so by virtue of an agreement and in conjunction with the Central Powers and Turkey, which would constitute an incident of a European war; that Serbia herself recognized this character of the attack by breaking her diplomatic relations with Bulgaria and inviting the Entente Powers to assist her "without previously coming to an understanding with Greece, her Balkan ally." It was therefore evident, continued the document, "that we (the Greek Government) [in such a case] find ourselves outside the provisions as well as the spirit of our alliance."²³

The note, after emphasizing the conviction of the Greek Govern-

²³ Greek White Book, Doc. No. 34, Supplement, p. 126.

ment that by the stand it had taken in the matter it had furthered not only the interests of Greece, but also those of Serbia, because in that manner it could preserve intact its forces and the freedom of communication with Serbia, concluded by reiterating that Greece was always ready to face the Bulgarian danger even when it presented itself during the present war, "although Serbia was already struggling with two great Powers, but that Greece had always in view a Bulgarian attack undertaken separately, even in connection with the other hostilities against Serbia; but that the hypothesis of an attack concerted with other Powers was and ought to be outside their anticipations."

It is difficult to follow the trend of the thoughts of Constantine's Minister or to understand how his argument can be conciliated with the assurance that the Greek Government was ready to face the Bulgarian danger. In plain words, the Greek Government admitted that the *casus foederis* would arise if Bulgaria attacked Serbia when the latter was at war with two great Powers, namely, Austria-Hungary and Germany. But the Premier of Constantine argued that Greece was bound to assist Serbia in a war with two great Powers only in case she was attacked by Bulgaria acting alone and not in combination with the attack by these Powers.

The Serbian Government, on receiving this reply from its ally, communicated its views on the subject and insisted that in case of a Bulgarian aggression against Serbia the *casus foederis* would arise. The Serbian Minister for Foreign Affairs pointed out to the Greek Government that both the spirit of the Treaty of Alliance, which guaranteed the territorial integrity of the contracting parties in case of aggression, and the text, in which no mention whatever is made that the treaty ceases to have a binding force if Bulgaria is allied with another Power, prove that Greece is bound to assist Serbia, if the latter, without provocation on her part, is attacked by Bulgaria or another Power; that in the view of the Serbian Government the aim of Bulgaria was to dispossess Serbia of the territories she acquired through the Treaties of London and Bucharest and also to prevent Serbia and Greece from having contiguous boundaries; that the object of the alliance is the assurance of the situation

created after the Balkan Wars and that the treaty aims at the integrity of the territories of the two allies; that Article 1 does not state that Serbia and Greece should be attacked by only one enemy and not by many, but speaks generally of an attack without fixing the number of the attacking Powers: that to adopt the Greek contention would mean that the allies had wished to insure themselves "from the lesser but not from the greater danger."

As to the argument that Serbia broke off her diplomatic relations with Bulgaria without consulting Greece, the Serbian Foreign Minister pointed out that Serbia had no choice on account of the aggressive attitude of Bulgaria and that, besides, Greece herself had mobilized her army without consulting Serbia.

Answering the other contention of the Greek Government that the treaty had not in view a combined attack by Bulgaria and other belligerents against Serbia, the Serbian Minister said that, according to the statement of the Greek Government, the latter admitted that Greece should participate in the war against Bulgaria if other Powers attack Serbia simultaneously with Bulgaria, but not if they combined to do so together, which from the military point of view was the same; that in either case, namely, whether the adversaries of Serbia were allies or not, she is bound to carry on the war on two fronts and the military difficulties for Greece would have been the same. The Serbian Government, in concluding, drew the attention of the Greek Government to the fact that Greece had repeatedly given to Serbia the assurance that she would intervene, under the reservation only that Bulgaria should attack first. The note concluded by making a final appeal to Greece to come immediately to the aid of her ally.²⁴

Having reviewed the diplomatic contentions concerning the dual alliance, it may be pertinent to examine whether the point of view of the Government of Constantine as to the treaty obligations of Greece were well founded and justified her in refusing her aid to Serbia when the latter became involved in the present war.

In order to pass upon this question, it is necessary to inquire into the circumstances under which the contracting parties entered into

²⁴ Greek White Book, Doc. No. 38, Supplement, p. 130.

the alliance and the reasons which impelled them to league themselves against Bulgaria.

After the first Balkan War, Mr. Venizelos, with his usual farsightedness, foreseeing an aggressive movement on the part of Bulgaria, scolded the Serbian Government as to whether, in view of the menacing attitude of their ally, *i.e.*, Bulgaria, Serbia would be willing to conclude a defensive alliance with Greece in order to ward off the then impending Bulgarian danger. This suggestion having been favorably received by Mr. Pachitch, the Serbian Premier, negotiations were carried on for some time through their respective governments looking to a definite agreement to that effect. A hitch, however, occurred during the negotiations because the Serbian Government demanded that the defensive alliance should not be directed against aggression on the part of Bulgaria only, but be also extended to include an attack from another Power, the Serbian Government having particularly in mind Austria-Hungary. Greece having demurred to that condition, Serbia positively refused to conclude the alliance. The question was left in abeyance for some time, until the repeated attacks of the Bulgarian troops against the Greek outposts in Macedonia in April-May, 1913, for the mastery of certain localities of strategical importance compelled Greece to reconsider the Serbian condition.

It is now an open secret that the Greek Government hesitated for some time to consent to the insertion of the words "third Power" in the diplomatic instrument binding the two countries in a defensive alliance, and it only acquiesced in the Serbian request on account of the aggressive attitude of Bulgaria. The question was so important that a ministerial council was held at the royal palace under the presidency of Constantine, when Mr. Venizelos's view favoring the immediate signature of the Treaty of Alliance was fully discussed and the advantages favoring the acceptance of the Serbian demand and the disadvantages against it were carefully considered. The Premier, Mr. Venizelos, urged the conclusion of the alliance and the signature of the instrument as it was submitted by Serbia including the words "third Power" to which the Greek Government had formerly objected as being too general and appli-

cable to any Power, including Austria-Hungary. He reasoned that the Bulgarian danger was imminent, while that of the "third Power" was remote, and that in case Austria should attack Serbia, Russia would protect the latter country, and in that case there would be a European war; that in such a case Greece would not be left alone with Serbia; and that Greece would naturally side with the Powers aligned against Austria, namely England, France, and Russia. This view was indorsed both by the King and the ministerial council and the conclusion of the treaty was decided upon. Mr. Venizelos divulged the character of the alliance between Greece and Serbia and explained the circumstances under which the two contracting parties concluded it, in order to refute the arguments of some politicians, who, being then in the confidence of the former King, alleged that the *casus foederis* would not arise even if Bulgaria attacked Serbia. This question was then and has ever since been the paramount question in Greece. It came up for discussion in the Greek Legislature on October 4, 1915, just before the entrance of Bulgaria into the present war on the side of the Central Powers. Mr. Venizelos, addressing the representatives of the nation, said amongst other things that ever since the conclusion of the alliance he had never ceased to consider the obligations towards Serbia as having a binding force upon Greece.

In May, 1914, when the relations between Greece and Turkey had reached the breaking point, the Greek Government, relying on the Greco-Serbian Alliance, inquired of Serbia whether Greece could count upon the military assistance of her ally in case she (Greece), being involved in war with Turkey, should be attacked by Bulgaria. The answer of the Serbian Government was that the country, on account of the two Balkan Wars, was exhausted and unprepared for a new conflict, and urged Greece to endeavor, by all possible means, to avoid war with Turkey, but that Serbia would, nevertheless, declare to Turkey that a Greco-Turkish war could not leave her indifferent. "Serbia," declared Mr. Venizelos, "in those circumstances acted as a sincere friend and in the spirit of her treaty obligations."²⁵

²⁵ Supplement to the newspaper *Patris*, speeches of Mr. Venizelos during the sittings of the Boulé on October 4, 1915, pp. 6, *et seq*; also English translation

When the present European War broke out Mr. Venizelos was at Munich on his way to Brussels to meet the Turkish plenipotentiaries for the settlement of the question of the Ægean Islands. He received a telegram from Mr. Pachitch, the Premier of Serbia, asking him what would be the attitude of Greece in connection with the war and the Treaty of Alliance with Serbia. Mr. Venizelos answered by expressing his personal opinion in the sense of the answer given subsequently by the Greek Government,²⁶ which undoubtedly received also the royal sanction, a fact to be noted on account of the subsequent conduct of Constantine in the matter. It is also to be noted that the Serbian Government did not complain about the policy then adopted by Greece.

Immediately after the second Balkan war (in June–August, 1913), Turkey, still chafing under the crushing defeat she had sustained from the hands of her former vassal states (Serbia and Bulgaria) and Greece, and bemoaning the loss of her territory in European Turkey and her insular possessions, was watching for an opportunity to snatch away from Greece the Ægean Islands near the western coast of Asia Minor, the possession of which the Young Turks declared to be indispensable to the security of Asia Minor itself. The principal argument of Turkey was, that as the coast of Asia Minor was inhabited by Greek populations, it would be dangerous to have Greece so near the coast for fear that the Greeks on the opposite coast of Ionia might revolt against the Sultan's authority. In short, the Ottoman Porte claimed that as it already had under its yoke a large Greek population on the coast of ancient Ionia, it was indispensable, in order to keep the latter under its misrule, to have also the other 150,000 Greek inhabitants residing in the islands along the coast.

The view that the state possessing the mainland or coast of Asia Minor should also hold the islands near it was strongly impressed upon the Turkish Government by Germany. The views of the German Government on this question were openly expressed during

of speech on "Greece in Her True Light," by Socrates A. Xanthaky and Nicholas G. Sakellarios, pp. 49, *et seq.*

²⁶ Greek White Book, Doc. No. 18, Supplement, p. 114.

Emperor William's visit at Corfu, in the spring of 1914, when the then German Ambassador at Constantinople, Von Wangenheim, who had accompanied his master, said bluntly to Mr. Streit, the then Minister for Foreign Affairs of Greece, that these islands ought to belong to the Power owning the opposite coast of Asia Minor.²⁷

Be that as it may, Turkey at that time was preparing for a war of "revanche" against Greece. Hence her eagerness to acquire speedily two Dreadnoughts in England, which on the opening of the European War were fortunately taken over by the British Government, thus depriving Turkey of a naval force which might have been fatal to the interests of the Allies in the Black Sea. It was at that time that Mr. Venizelos inquired of the Serbian Government as to its probable attitude in case of war between Greece and Turkey, it being then the intention of Greece to declare war against that country before the arrival in the Ægean Sea of the Dreadnoughts purchased by Turkey. The answer he received has been stated above.

On numerous occasions, in speeches and interviews, Mr. Venizelos had not ceased to declare that Greece was bound to assist Serbia in her struggle for life. That the binding character of the Greco-Serbian Treaty was recognized in Greece up to the overthrow of the Venizelos Cabinet in October, 1915, is proved by the official declara-

²⁷ See speech of Mr. Repoulis in Boulé, in supplement to *Patris*, etc., etc., 1917, p. 39; also in *Cinq Ans d'Histoire Grecque* (speech of Mr. Repoulis in French), p. 183.

That was evidently the reason why King Constantine and his Germanophile General Staff were moving heaven and earth, so to say, to persuade the people in Greece that it was contrary to the interests of the country to lay any claim to the coast of Asia Minor because under no circumstances did they wish to counteract the colonial plans of the Hohenzollern family.

The following incident, which was related to the present writer by a trustworthy person, shows that the royal family in Greece was working all the time for the King of Prussia. Queen Sophie visited at one time a mess room where Greek refugees from Asia Minor were served their meals at the public expense. The Queen, approaching the refugees, told them that now that the Germans were in their country they were undoubtedly well treated, when the spokesman of the refugees, a schoolmaster, seizing the opportunity, answered the Queen that the Greeks in Asia Minor would be better off and happier when the pearl of Ionia would be affixed to the Crown of Hellas. Sophie, on hearing this unexpected answer, said in response: "That will never, never happen," and immediately left the place, much to the amazement of the bystanders.

tions above quoted of the Greek Government, irrespective of party. That even the King had recognized that the *casus foederis* would arise in case of an attack by Bulgaria against Serbia is evident not only from the official dispatches which undoubtedly were sent with his approval inasmuch as some of them were written by Mr. Streit, the pro-German Foreign Minister, but is attested by the interviews that Constantine at that time gave to a well-known British correspondent who was very friendly with the King.²⁸

But while the responsible government was giving assurances to Serbia and to the Entente Powers that Greece would, in case of attack by Bulgaria against Serbia, carry out her treaty obligations, the irresponsible and occult government of Constantine was pledging the country to a policy contrary to that pledged by his responsible ministers. Official correspondence which has now come to light proves clearly that this policy of double-dealing and deceit was put into execution by Constantine from the very beginning of the European War, with the connivance of some of the Greek ministers. The guilt of Constantine is not only that he transgressed every etiquette of parliamentary government and violated the very spirit of the constitution in carrying on a secret correspondence with a foreign sovereign, namely, Emperor William II, in which he pledged his country to a policy agreeable to his august brother-in-law, but that he also deceived the Entente Powers by giving them to understand that Greece could not possibly depart from her traditional policy and act contrary to the interests of the Protecting Powers of Greece.²⁹

After the overthrow of Constantine in June, 1917, and the advent again to power of Mr. Venizelos, the question of the treaty obligations of Greece towards Serbia was again discussed at great length. During the sittings of the Boulé on August 26, 1917, both the Premier and some of the other members of the Cabinet threw great light on this question and laid also before the Greek House of Representatives

²⁸ See Crawford Price, *Venizelos and the War*, p. 53.

²⁹ See excellent exposition of this double-dealing in *Revue de Paris* of June 1, July 1 and 15, 1917 by Auguste Gauvain, translated into English by Prof. Carroll N. Brown and published by the American-Hellenic Society.

the texts of the Treaty of Alliance and the Military Convention with Serbia, as well as the official correspondence relating to the negotiation and conclusion of the Greco-Serbian Alliance. Mr. Venizelos in a masterly speech delivered in the Boulé during that sitting said that in the beginning of the European War, namely, in September, 1914, he had declared to the Entente Powers, on behalf of the Greek Government, that, remembering what Greece owed to these Powers, although it would not be possible then to assist Serbia on account of the danger from Bulgaria, or to send an army to France, still, if Turkey participated in the war on the side of their enemies Greece would be ready to participate in the war on the side of the Entente Powers provided they guaranteed her against an attack from Bulgaria.³⁰

Turning his criticism on Mr. Zaimis, during whose term of office Greece had refused to carry out her treaty obligations towards Serbia, Mr. Venizelos said, "he knew everything; he had presided over the Council which had decided to submit to the Serbian demand" regarding the scope of the alliance. "When," he continued, "the officials of the Ministry called Mr. Zaimis's attention to the texts of the agreements with Serbia, he replied that he did not wish to lose his time over such things because of what use would that be to him, since he had assumed the power precisely in order not to carry out the treaty."³¹

That Constantine had deliberately violated the Greco-Serbian alliance nobody doubted, but few persons had the privilege of knowing that he had planned to violate it at the very time of its signature. This point, although known for some time, was officially disclosed before the representatives of the nation by one of the Cabinet Members of the present Greek Government who was also present when the ex-King intimated his intention of treating the treaty as a "scrap of paper" if ever the opportunity was offered to him. Mr. Repoulis, the Minister of the Interior, speaking in the Boulé on August 25, 1917, declared that the meaning of the Treaty of Alli-

³⁰ Speech in supplement to the newspapers *Paris*, etc., etc., 1917, pp. 93-94; see, also, *op. cit.*, *Cinq Ans d'Histoire Grecque*, p. 14.

³¹ *Ibid.*, supplement to *Paris*, etc., etc., 1917, p. 144, *ibid.*, *Cinq Ans d'Histoire Grecque*, p. 71.

ance and of Article 1 of the Military Convention was plainly explained not only in the Ministerial Council in which they were considered before signature, but in the presence of Constantine; that it was repeatedly said and emphasized that Greece was bound to assist Serbia against any third Power, and the name of the third Power which would be likely to attack Serbia was mentioned. "When the sitting of the Council came to an end," he continued, "we were dumbfounded to hear the Chief of the State (Constantine) say that in such a case he would violate the treaty."³²

Such being the facts in regard to the Greco-Serbian Treaty, it would be idle to enter into a long discussion as to the merits or demerits of the arguments used at the time by Constantine or his nominees in order to evade the treaty obligations of Greece towards her ally Serbia. Suffice it only to say that, had even the facts preceding the conclusion of the alliance not been known, and had even the contracting parties not fully understood and discussed the meaning of the "third Power" inserted in the Military Convention (Article 1), still the very texts of these instruments would have been more than sufficient to convince any impartial person that the obligations arising out of them were not of a limited but of a general character. The preamble of the treaty states distinctly that the object of the contracting parties is "the firm desire to preserve a permanent peace in the Balkan Peninsula," and they considered that "the most effective means of attaining that purpose" was "to be linked together by a close defensive alliance."

Nor is there any limitation either as to the number of their prospective enemies or as to the geographical situation of such enemies, who might, consequently be either in the Balkan Peninsula or outside of it. Thus, Article 1 of the treaty refers to an attack against either of the contracting parties without specifying either the number of the enemy states or the geographical position of the country, namely, whether it is situated in the Near East or Europe.

³² Supplement to *Patris*, etc., etc., pp., 40-41, 1917. This incident was disclosed for the first time by the *Temps*, December 11, 1916. See also *Cinq Ans d'Histoire Grecque, 1912-1917*, by Léon Maccas, pp. 184-185.

The Military Convention (Article 1), going a little further, speaks of the contingency of war between "one of the allies and a third Power," under "the circumstances provided for by the Treaty of Alliance," namely, in case one of them should be attacked "without any provocation on its part" (Article 1 of the treaty); in the event of the failure to come to a separate understanding with Bulgaria about the division of their conquests (Article 2); in support of their determination to have a contiguous boundary line (Article 3), and of various other detailed provisions concerning their mutual interests.

From the general wording of both diplomatic instruments, it is evident that the attack by Bulgaria is quite independent from that of another Power and that an attack from Bulgaria is sufficient to justify either of the allies in asking the assistance of the other. There is, however, one limitation in case of an attack by a third Power and Bulgaria at the same time, and that is that in such a case the number of troops to be furnished is to be fixed by common agreement "according to the military situation" and the consideration of "the security of the territory" of Greece and Serbia.³³

As the letter of both the Treaty of Alliance and the Military Convention does not support the contention that the obligations arising out of them were of a limited and not of a general character, it might be pertinent to inquire whether the intention of the contracting parties can be deduced by way of interpretation or construction from the context of the instruments. That will bring us to refer to the rules of interpretation or construction of international covenants.

Without going into a learned dissertation on the views of classical writers or on the rules of the law of nations, let us summarize the principles adopted today by contemporary authorities on this point.

According to the theory in principle, the maxims of the Roman law applicable to private covenants is the cornerstone of the whole edifice of the interpretation or construction of international compacts.³⁴

³³ See Article 4 of the Military Convention in Doc. No. 4, Supplement, p. 97; also, interpretation of Serbian Government in Greek White Book, Doc. No. 38, Supplement, p. 130.

³⁴ A. Rivier, *Principes du Droit des gens*, Vol. II, p. 122.

Therefore, the rules in practice and the principles governing the construction of private contracts and laws are applicable in the interpretation of treaties.³⁵ This view is indorsed by the Cour de Cassation of France.³⁶

A principle generally indorsed by writers is that treaties, being covenants of good faith, should be construed "equitably and not technically."³⁷

Vattel says that

As Sovereigns [or Sovereign States] acknowledge no common judge, no superior that can oblige them to adopt an interpretation founded on just rules, the faith of Treaties constitutes in this respect all the security of the Contracting Powers. That faith is no less violated by a refusal to admit an evidently fair interpretation than by an open infraction. It is the same injustice, the same want of good faith; nor is its turpitude rendered less odious by being choked up in the subtilities of fraud.³⁸

In the opinion also of Dr. Lieber, "good faith in interpretation means that we conscientiously desire to arrive at truth . . . it means the shunning of subterfuges, quibbles, and political ruffling—it means that we take the words fairly as they were meant." "Faithful interpretation implies that words be taken in that sense, which we honestly believe that their utterer attached to them."³⁹

But it goes without saying that one should have recourse to inter-

³⁵ Pradier-Fodéré, *Cours de Droit Diplomatique*; also Wheaton's *Elements of International Law*, 5th English ed. (1916) p. 399, II, p. 489; also Pradier-Fodéré, *Traité de Droit public International*.

³⁶ Pradier-Fodéré, II, No. 1174, with some qualifications; see, *contra*, Funck-Brentano and Sorel, pp. 123-124.

³⁷ See Phillimore, *Commentaries upon International Law* (1871), Vol. II, pp. 89, *et seq.*; Vattel, *Le droit des gens*, ed. Pradier-Fodéré (1863), Vol. II, S. 269, p. 255; F. de Martens, *Traité de Droit International, traduit du Russe par A. Leo* (1883), Vol. I, p. 556; Merignhac, *Traité de Droit public International, Deuxième Partie*, p. 679; Calvo, *Le Droit International*, Vol. I, p. 670, ed. 1880; Pradier-Fodéré, *Traité de Droit Int. public*, Vol. II, No. 1188, Heffter, *Le Droit Int. de l'Europe, traduit par J. Bergson*, ed. F. H. Geffcken (1883), p. 214; Pinheiro Ferreira, in Vattel, ed. Pradier-Fodéré, p. 252, note 1; Bluntschli, *Le Droit International codifié, traduit du Russe par Lardy*, Art. 449.

³⁸ *Ibid.*, Vattel, translated by J. Chitty (1883), p. 247.

³⁹ F. Lieber, *Legal and Political Hermeneutics* (1880), pp. 80-81, Ch. IV, S. IV.

pretation only when there is any ambiguity in the wording of the instrument and not when the meaning is clear. As Vattel says:

It is not allowable to interpret what has no need of interpretation. When its (of a deed) meaning is evident, and leads to no absurd conclusion, there can be no reason for refusing to admit the meaning which such deed naturally presents. To go elsewhere in search of conjectures, in order to restrict or extend it, is but an attempt to elude it. If this dangerous method be once admitted, there will be no deed which it will not render useless. However luminous such a clause may be, however clear and precise the terms in which the deed is couched, all this will be of no avail, if it be allowed to go in quest of extraneous arguments, to prove that it is not to be understood in the sense which it naturally presents.⁴⁰

And further "the equity of this rule is glaringly obvious, and its necessity is not less evident. There will be no security in conventions, if they may be rendered nugatory by subsequent limitations, which ought to have been originally specified in the deed, if they were in the contemplation of the contracting parties."⁴¹

From the above summary of the views of the authorities on international law, it is evident that the primordial principle governing the interpretation or construction of diplomatic instruments is that the contracting parties should avoid subtleties and adhere to the letter of the instrument whenever the meaning of it is clear and distinct, or to the spirit whenever there is any doubt or obscurity in the meaning of a word or expression, the dominant feature in both cases being *uberrime fides*.

Both the letter and spirit of the Greco-Serbian Treaty of Alliance and the Military Convention indicate that the two states undertook to assist each other in case of armed conflict between one or both of them and a third Power, and particularly Bulgaria — provided there was no provocation on the part of either of the contracting parties and they were on the defensive. The incidents and events preceding the conclusion of the dual alliance attest that Constantine, in refusing to go to the aid of Serbia when the assistance of Greece was invoked, deliberately violated both the letter and the spirit of the alliance and in doing so he simply indorsed and adopted the

⁴⁰ Vattel, II, translated by J. Chitty (1883), p. 244.

⁴¹ *Ibid.*, p. 245.

Prussian or Teutonic theory of the obligations resulting from treaties. The ex-king evidently forgot the sacred words of the Delphic Oracle on persons who violate their oaths.⁴²

Be that what it may, the sanctity of treaties has been solemnly vindicated in Greece after the expulsion from the country of the exalted person who had attempted to drag Hellas to infamy, by the adoption of the following resolution by the representatives of the Greek nation on August 25, 1917:

The Boulé, declaring that international agreements have a sacred character and likewise the obligations of the alliance of Greece towards Serbia, conveying a brotherly greeting to the heroic Serbian nation, and convinced that the entire nation is ready for every sacrifice so that by her participation on the side of the Allied States in the world war for the liberty of the people she may reestablish the national honor, recover the lost territories, and in general safeguard the national interests, approves the answer to the royal speech of the majority of the committee *ad hoc* and expresses its full confidence in the Government.⁴³

At last the participation of Greece in the war on the side of her ally Serbia in order to fulfill her treaty obligations and those due to her protecting Powers, to whom the Greek nation owes so much has, much to the joy and satisfaction of the friends of justice and the lovers of Hellas, wiped out the stain of dishonor and ingratitude which would have been otherwise impressed upon the Hellenic people.

THEODORE P. ION.

⁴² Yet hath the Oath God a son who is nameless, footless and handless; mighty in strength he approaches to vengeance, and whelms in destruction all who belong to the race or the house of the man who is perjured. But oath-keeping men leave behind them a flourishing offspring. Herodotus, Book V., Erato. Pythoness to Glaucus. Translation of G. Rawlinson, Vol. III, p. 168.

⁴³ Supplement to *Patris*, etc., etc., 1917, p. 212.

EDITORIAL COMMENT

INTERNATIONAL LAW AND THE WAR

MEETING OF THE EXECUTIVE COUNCIL

Pursuant to the notice sent to the members to that effect, the annual meeting of the Society was omitted this year, but instead, there was a meeting of the Executive Council of the Society held in Washington, on Saturday, April 27, at which the following were present:

HONORABLE ELIHU ROOT, *President of the Society.*
DR. DAVID JAYNE HILL, *former Assistant Secretary of State and Ambassador to Germany, and a Vice President of the Society.*
HONORABLE CHANDLER P. ANDERSON, *former Counsellor for the Department of State, Treasurer of the Society.*
HONORABLE JOHN BARRETT, *Director General of the Pan American Union.*
MR. CHARLES HENRY BUTLER, *former Reporter of the Supreme Court of the United States, Corresponding Secretary of the Society.*
MR. CHARLES NOBLE GREGORY, *of the Bar of the District of Columbia.*
PROFESSOR CHARLES CHENEY HYDE, *of Northwestern University.*
PROFESSOR JOHN H. LATANÉ, *of Johns Hopkins University.*
PROFESSOR WILLIAM R. MANNING, *of the University of Texas.*
HONORABLE A. J. MONTAGUE, *Representative in Congress from Virginia.*
MAJOR JAMES BROWN SCOTT, *United States Reserves, Recording Secretary of the Society.*
MR. ALPHEUS H. SNOW, *of the Bar of the District of Columbia.*
PROFESSOR GEORGE G. WILSON, *of Harvard University.*

After the hearing of reports, the reelection for the ensuing year of the officers and committees selected by the Council, and the transaction of other administrative matters, a full account of which will be printed and distributed to the members, the Council unanimously adopted the following statement:

The Executive Council of the American Society of International Law considers that the very existence of international law is now at issue.

The Committee on Annual Meeting has therefore refrained from

calling the members of the Society from the active work on which most of them are engaged to meet for the discussion of questions of law. The only great question of international law today is whether that law shall continue to exist.

Upon that subject the American Society of International Law reaffirms the clear and unvarying support of the United States for the rule of law, expressed in the recognition of international law in the Federal Constitution, in the decisions of its highest court and in the utterances of its chief magistrates and statesmen.

Mr. Webster, while Secretary of State, made this announcement:

Every nation, on being received, at her own request, into the circle of civilized governments, must understand that she not only attains rights of sovereignty and the dignity of national character, but that she binds herself to the strict and faithful observance of all those principles, laws, and usages which have obtained currency among civilized states, and which have for their object the mitigation of the miseries of war.

President Cleveland, in his special message of 1893, addressed to the Congress of the United States, said:

The law of nations is founded upon reason and justice, and the rules of conduct governing individual relations between citizens or subjects of a civilized state are equally applicable as between enlightened nations. The considerations that international law is without a court for its enforcement and that obedience to its commands practically depends upon good faith instead of upon the mandate of a superior tribunal only give additional sanction to the law itself and brand any deliberate infraction of it not merely as a wrong, but as a disgrace. A man of true honor protects the unwritten word which binds his conscience more scrupulously, if possible, than he does the bond a breach of which subjects him to legal liabilities, and the United States, in aiming to maintain itself as one of the most enlightened nations, would do its citizens a gross injustice if it applied to its international relations any other than a high standard of honor and morality.

The Council would call attention to the fact that the entire diplomatic and consular service of all nations operates under the control and protection of international law. That therefore all the vast interests within the charge of these agencies must be left unserved and unadministered if the beneficent provisions of international law are abandoned or disregarded. They further venture to call attention to the fact that more than two-thirds of the surface of the globe is covered by the high seas, that no law is current thereon except international law, that noble branch of law which President Wilson, on April 2, 1917, addressing the Congress of the United States, declared had its "origin in the attempt to set up some law which would be respected and observed upon the seas, where no nation had right of dominion and where lay the free highways of the world." "By painful stage after stage," he said, "has that law been built up with meager enough

results indeed after all was accomplished that could be accomplished, but always with a clear view at least of what the heart and conscience of mankind demanded."

To say no more than has been said as to international relations upon land if this one law and common rule which guards the traffic of the seas is allowed to lapse in that vast and preponderant domain, no measure of right and justice, no rule of humanity or restraint will remain, only the desolating condition which the *Vulgate* ascribes to Hell, *Ubi umbra mortis et nullus ordo sed sempiternus horror inhabitat*.

Therefore, those just and wise doctrines by which international relations are guided, humanized, and controlled, can not be debilitated or abandoned. Therefore, they must be taught by our scholars, learned by our rising youth, declared and defined by our courts, announced by our Congress, enlarged by our treaties, and enforced by our Chief Executive.

Therefore, at need, our army upon the land and our navy upon the sea, with a spirit and devotion which have never declined, must maintain and defend them, not for the good of this nation or this time alone, but for the good of all nations and all men, now and forevermore.

REQUISITIONING OF DUTCH SHIPS BY THE UNITED STATES

On March 20, 1918, the President of the United States, in accordance with the Act of Congress of June 15, 1917, conferring upon him power to take possession of any vessel within the jurisdiction of the United States and to use or operate the same by the United States, "in accordance with international law and practice," and as Commander-in-Chief of the Army and Navy of the United States, issued a proclamation stating "that the imperative military needs of the United States require the immediate utilization of vessels of Netherlands registry, now lying within the territorial waters of the United States," and because of the authorization and of imperative military needs, the President authorized and empowered "the Secretary of the Navy to take over on behalf of the United States the possession of and to employ all such vessels of Netherlands registry as may be necessary for essential purposes connected with the prosecution of the war against the Imperial German Government." The proclamation further stated that "The vessels shall be manned, equipped and operated by the Navy Department and the United States Shipping Board, as may be deemed expedient; and the United States Shipping Board shall make to the owners thereof full compensation, in accordance with the principles of international law." By an executive order

issued on March 28 the President included in the taking over all tackle, apparel, furniture and equipment and all stores, including bunker fuel, aboard each of the vessels, upon the same conditions prescribed for taking over the vessels.

On April 2, 1918, the War Trade Board announced that Dutch ships en route from Holland to the United States at the date of the requisition of Dutch shipping in American ports would not be taken over upon arrival within the jurisdiction of the United States. The reason given for the exemption of these vessels was that as the requisitioning of Dutch shipping was, according to the President's proclamation, to restore the ships laid up in American harbors to their normal activity, it was not intended that ships then in service from Holland would be taken over, as by so doing their normal activity would be disturbed.

The action of the President was the result of careful consideration of the needs of the United States and of the principles and practices of nations which would allow the country to take the action which military exigencies seemed to require, inasmuch as an act, however necessary it might seem to a particular country, would be unjustified if inconsistent with the principles and practices of nations and international law resulting therefrom. However, the President was anxious to exercise an admitted right with the consent and coöperation of the Netherlands Government. The Dutch Government appears to have taken the initiative in the matter in the hope of securing an arrangement with the Entente Powers by the terms of which food, said to be needed for Holland, should be obtained from the Entente countries and carried by Dutch ships to Dutch ports, and in consideration thereof a certain amount of Dutch tonnage was to be placed at the disposal of the Entente Powers. A failure to reach an agreement caused the President to stand upon the principles of international law instead of acting in pursuance of a specific contract with the Dutch Government, as he would have preferred.

The negotiations begun by the Dutch Government are stated in an official report made by His Excellency, the Minister for Foreign Affairs, to the Netherland States-General on March 12, 1918. The reason for the failure of the negotiations to effect the purpose for which they were undertaken is contained in a statement by the President made public at the date of the proclamation and in connection with it. The attitude of the Dutch Government after, and in relation to,

the seizure of its shipping in American ports is set forth in a statement appearing in the *Official Gazette* of the Netherlands under date of March 30, 1918.

First as to the report of the Netherlands Minister for Foreign Affairs.¹ The opening paragraph of this important document states the problem which confronted the people of Holland, and the second paragraph the action which the government of that country took to meet and to solve it. Thus the first paragraph reads:

Owing to the participation of the United States in the war a new situation was created with regard to the provisioning of Holland from oversea. So far supplies have been obtained from neutral countries and arrangements had to be made with belligerents who took to themselves the right to interfere with these supplies. The United States, however, had, by virtue of an indisputable sovereign right, to decide whether it would grant export licenses or not either for raw materials or manufactured articles or for coal necessary for the bunkering of ships; for, so far as it was, therefore, still possible to obtain goods in countries remaining neutral or our colonies, it was practically impossible to convey these here unless the certainty existed that the necessary bunker coal would be supplied, either in Entente ports or American ports where, up until now, negotiations carried on with the Entente and the United States separately had yielded no result.

The second paragraph, stating the steps taken, follows:

The circumstance was made use of that some American authorities in an economic sphere had proceeded to Europe to consult with the Entente in order to endeavor to come to an arrangement with the Entente and the United States together. The conversations which were conducted to this end at the end of 1917, principally in London, with representatives of the American, British, French, and Italian Governments had, in the first place, for their object the ascertaining of the point of view of those governments concerning supplies for Holland, while, on the other hand, the Dutch representatives were given an opportunity to bring forward the peculiar position of Holland and to make it clear in how far the general principles which the various governments had announced concerning the provisioning of neutrals might or might not be applicable to Holland. The object of the conversations was not in the first place to come to a definite arrangement. The delegates of the governments had not any authority to proceed to the signing of an agreement, but they might be considered as being well versed in the position of their governments, so that a basis could be laid upon which an arrangement might be worked out.

The report then states that a working basis was reached which, however, was of a tentative nature, as it would have to be considered by the various governments, and this agreement related principally

¹ Printed in full in the *Official Bulletin*, Washington, March 16, 1918.

to the questions of supplies for Holland, export from Holland, and Dutch shipping. In regard to the supplies for Holland, it is stated that that country would obtain the necessary facilities for the importation of certain articles mentioned in an attached list, and that the supplies would be furnished without conditions other than that they were destined for use in Holland. In this list fodder and fertilizers specifically occupy "a special place." In the second place, the associated governments were not to object to the maintenance of existing arrangements concerning the export of Dutch agricultural products. The third question, and one of great difficulty and delicacy, related to the tonnage required to convey the supplies. From the Dutch point of view it was necessary to retain at the disposal of the Netherlands Government the ships required to convey the supplies. "After deduction of this tonnage," to quote the exact text of the report, "from the whole of the Dutch trans-Atlantic shipping about half a million tons would be left at the disposal of the associated governments," which, apparently, was to be used outside of the danger zone, as the concluding sentence of the preceding paragraph reads, "The remaining tonnage would be held at the disposal of the associated governments for use outside the so-called danger zone."

In anticipation of an agreement of the kind outlined, the Dutch Government "expressed its readiness to the owners of the vessels which were being detained in America to grant licenses for the chartering of their vessels for a voyage outside of the so-called danger zone." Six vessels lying in American ports and already loaded were excepted from this arrangement, and two loaded with rice were to proceed and in exchange for them two other vessels were to be left in America. It appears from the report that the Netherlands Government, however, was not in a position to enter into a contract with the Entente governments without securing the consent of the Imperial German Government to the terms of the agreement, which the very next paragraph of the report is careful to point out:

As is explained above, it was for the Dutch Government to make a proposal upon the foregoing basis. The government did not consider it advisable to proceed to this without first having consulted Germany. In the first place, because the limitation imposed upon exports on any supply of cattle food and fertilizers might make it impossible to obtain an economic arrangement with Germany for the supply of indispensable goods, such as coal, etc. In the second place, because, by closing the free channel in the North Sea, Germany might render impossible the carrying out of an agreement as intended above.

As the unwillingness of the Imperial German Government to agree to the proposed arrangement is responsible for the breakdown of negotiations between Holland and the Entente Powers, the portion of the report dealing with this phase of the question is quoted in full.

The difficulties thrown in the way by Germany on the sailing of the *Nieuw Amsterdam* on her last trip had strengthened the government in its opinion. The German Government, whose point of view regarding the ceding of neutral tonnage is given by the article in the *Norddeutsche Allgemeine Zeitung*, which was also published by the Dutch press, stated that it was not able to coöperate in increasing the tonnage in oversea countries, as by doing so it was playing into the hands of its enemy. Therefore it had to object that Dutch tonnage still in Dutch ports should leave those ports.

This attitude made it impossible for the Dutch Government to make any proposals to the associated governments. On dividing tonnage, as explained above, it has taken into account that the whole fleet would be in navigation. Moreover, it was not to be thought of that the associated governments would allow a ship to leave for Holland — even with German guaranty of the free return — if the Dutch fleet had to remain laid up, and even with an associated government guaranty of uninterrupted return would not be able to sail. Negotiations with the German Government give good grounds for the expectation that it will be found prepared to revise its attitude so far that it will not oppose the sailing of a vessel lying in Holland provided this is in exchange for a vessel lying on the other side of the ocean.

If it is in the meantime taken into consideration that there is here 298,476 tons suitable for the trans-Atlantic service apart from some passenger vessels which do not come into consideration for this service, which will undoubtedly have to serve for Dutch supplies, then it is clear that even with this revised attitude an arrangement would only be able to be reached which could not by any means be called satisfactory. Owing to the system of exchange the tonnage for Holland, especially for supplies from the Indies, will be extremely limited. Germany stated that she had to object upon principle against any limitation of export which was obviously directed against that country and on the basis of such a limitation imposed would not be willing to enter into negotiations with regard to a new economic arrangement. The government has found in this a reason to give notice that it would not make any proposal in this matter which contained a compulsory limitation of Dutch exports.

In view of the difficulty of reaching an agreement with Germany, Holland apparently proposed that the United States furnish it with 100,000 tons of wheat before a definite agreement should be reached, which the Government of the United States was willing to do provided the Dutch Government should act on its part as if the definite arrangement already existed. This would mean, the report continues, "that the tonnage to be made available for the Entente, according to the aforesaid basis, was now at their disposal," and the report concludes

with the following statement: "The government is now investigating whether it is possible to take steps to proceed to such a transaction, and hopes very soon to come to a decision."

Next as to the President's statement at the time of taking over Dutch shipping within the jurisdiction of the United States.¹ In this very important document the President refers to the official Dutch report of March 12, 1918, from which passages have already been quoted showing the desire of Holland and the attitude of the Imperial German Government. The President then states the delays which had occurred in reaching an agreement and the proposal made by the Dutch delegates, "in order that ships might sooner be put into remunerative service, that Dutch tonnage lying idle in American waters should, with certain exceptions, be immediately chartered to the United States for periods not exceeding ninety days." The action of the two governments upon this proposal is thus stated by the President, and in his own words:

This proposal was accepted by the United States Government, and on January 25, 1918, the Dutch Minister at Washington handed to the Secretary of State of the United States a note expressing the terms of the temporary chartering agreement and his government's acceptance thereof. This agreement provided, among other things, that 150,000 tons of Dutch shipping should, at the discretion of the United States, be employed partly in the service of Belgian relief and partly for Switzerland on safe conduct to Cette, France, and that for each ship sent to Holland in the service of Belgian relief a corresponding vessel should leave Holland for the United States. Two Dutch ships in the United States ports with cargoes of foodstuffs were to proceed to Holland, similar tonnage being sent in exchange from Holland to the United States for charter as in the case of other Dutch ships lying in the United States ports.

This agreement, reached at the instance of Holland, was explicitly temporary in character, but the Dutch Government appears, however, to have been unable to carry it out because of the unwillingness of the Imperial German Government to consent to its realization. This fact is explicitly stated by the President:

The Dutch Government at once disclosed, however, that it was unwilling or unable to carry out this chartering agreement which it had itself proposed. . . . One difficulty after another was, however, raised to postpone the chartering of Dutch ships for Swiss relief, and, although the reason was never formally expressed, it was generally known that the Dutch shipowners feared lest their ships should be destroyed by German submarines, even though on an errand of mercy, and though

¹ Printed in full in the *Official Bulletin*, Washington, March 21, 1918.

not traversing any of the so-called "danger zones" proclaimed by the German Government. . . .

In respect of Belgian relief, the Dutch Government expressed its present inability to comply with the agreement on the ground that the German Government had given Holland to understand that it would forcibly prevent the departure from Holland of the corresponding ships, which under the agreement were to leave coincidentally for the United States. The Dutch Government even felt itself unable to secure the two cargoes of foodstuffs, which under the agreement it was permitted to secure, since here again the German Government intervened and threatened to destroy the equivalent Dutch tonnage which under the agreement was to leave Holland for the United States.

After calling attention to the fact that two months had elapsed since the making of the temporary charter agreement, that no reply had been made to the proposed general agreement, and that a final proposal made by Great Britain on March 7 and expiring on the 18th was submitted to Holland, the President states that an agreement in the premises was impossible because "we have been attempting to negotiate where the essential basis for an agreement, namely, the meeting of free wills, is absent." The President goes on to say that "even were an agreement concluded, there is lacking that power of independent action which alone can insure permanence," and after expressing sympathy with Holland at the disregard of its neutral rights at the hands of Germany, the President continues: "But, since coercion does in fact exist, no alternative is left to us but to accomplish, through the exercise of our indisputable rights as a sovereign, that which is so reasonable that in other circumstances we could be confident of accomplishing it by agreement."

In so doing, however, the President was mindful of Holland's needs, and stated the willingness of this government to allow the *New Amsterdam*, whose sailing had been obstructed by Germany, to take on board the cargoes of the two Dutch ships mentioned in the Dutch official report and to proceed unimpeded to Holland so far as the United States was concerned, notwithstanding the requisition of other Dutch shipping lying in American waters. Thus the President said:

We have informed the Dutch Government that her colonial trade will be facilitated and that she may at once send ships from Holland to secure the bread cereals which her people require. These ships will be freely bunkered and will be immune from detention on our part. The liner *New Amsterdam*, which came within our jurisdiction under an agreement for her return, will, of course, be permitted at once to return to Holland. Not only so, but she will be authorized to carry

back with her the two cargoes of foodstuffs which Holland would have secured under the temporary chartering agreement had not Germany prevented.

The President was also careful to point out that the Dutch owners would be compensated for the losses they should sustain, in accordance with the principles of international law, saying on this point that "ample compensation will be paid to the Dutch owners of the ships which will be put into our service, and suitable provision will be made to meet the possibility of ships being lost through enemy action."

The proclamation directing the Secretary of the Navy to take over Dutch shipping lying within the jurisdiction of the United States and the President's statement of the negotiations were issued on March 20. On the 30th of the month a statement appeared in the *Staats Courant* of the Dutch Government giving its version of the negotiations which had preceded the seizure of Dutch shipping, impugning the accuracy of the facts contained in the President's statement and expressing not merely the displeasure of the Dutch Government at the seizure of the shipping, but denouncing the act in terms which have hitherto been unusual in the relations between the Netherlands and the United States.¹ First as to the assertions contained in the President's statement which are alleged to be contrary to fact.

According to the presidential statement Holland is said not to have fulfilled entirely, because of German pressure, the provisional agreement which has been proposed in order that, pending a definite agreement relative to tonnage and the rationing of our country, our vessels lying in American ports should no longer lie there idle but be given an opportunity of making a voyage of 90 days at the most. This is absolutely incorrect.

But this is not the only inaccuracy with which the President is taxed. The Dutch statement mentions as equally incorrect the assertion:

that Germany is said to have threatened to sink the two vessels which were to leave here in return for the two vessels leaving for Holland with America's approval and that Germany made more and more serious threats in order to prevent compliance with the *modus vivendi* as well as the conclusion of a permanent agreement.

Recognizing that the burden of proof is, under the circumstances, incumbent upon Holland, the statement thus assumes the burden under which it seems to stagger.

¹ Translation in full printed in the *Official Bulletin*, Washington, April 13, 1918.

The true state of affairs is as follows:

After the War Trade Board had urged that the Dutch vessels in American ports should make a voyage pending the definite agreement, the Dutch Government proposed that some of these ships should travel in the service of the commission for relief in Belgium, that work of relief which the Netherlands has always promoted with all energy for the sake of the suffering population of Belgium and northern France. When the report came that Germany raised difficulties against America's demand that each time a Dutch ship should leave here in exchange for the departure of a relief ship from America the Netherlands Government was of the opinion that it was bound in good faith immediately to warn the American authorities in order that the said ships, which were on their way to Argentina, would be able to make for some other destination, which had the direct result that these ships were kept in the service in exact agreement with the provisional arrangement. And concerning the sailing of a part of the ships to the French harbor of Cette, a Swiss interest which finds great favor in Holland, the shipowners entirely agreed as soon as France had guaranteed that the ships would not be detained in Cette also. For this service various vessels had been chartered. The chartering and sailing of all the ships experienced no serious delay on account of the said objections while, for the rest, Germany had no influence whatsoever, nor did it attempt to gain any influence in the carrying out of the provisional arrangement which, moreover, only concerned the shipping between overseas countries; whatsoever really did prevent the carrying out of the provisional agreement was the extremely slow and sometimes missing overseas telegrams to and from the owners. The cause of this is still enveloped in mystery.

Denying that the Dutch Government was powerless to observe the provisions of the temporary agreement and that it could not have kept the permanent one if reached, the official Dutch statement asks what were the facts.

On February 22, last, with a view to the threatened need of food here in this country by the summer, the Dutch Government asked the American Government for an advance of 100,000 tons of wheat on the quantity of 400,000 tons to be definitely fixed. On March 6 the associated governments replied, it is true, affirmatively with regard to the 100,000 tons, although regarding the 400,000 tons no definite answer was given, but to this apparent accommodation the objectional condition was added that the associated governments should immediately obtain the disposal of the whole of that part of the Dutch mercantile marine that, according to the London draft agreement, would eventually come to them on the conclusion of a definite arrangement.

The statement next calls attention to the fact that under the agreement which it was proposed to negotiate with the Entente Governments, Dutch vessels would not be required to enter the danger zone; whereas the Entente Powers, according to this official statement,

repudiated the terms previously agreed upon, by insisting that Dutch vessels should be employed in the danger zone. To quote the exact language of the statement:

The Dutch Government, being compelled to do so, intended to agree to this as soon as it could obtain the assurance that not only could it firmly rely upon the 100,000 tons advance, but also on the full 400,000 tons of grain as an accepted basis for the definite arrangement. It was able to entertain this stipulation because it was definitely and expressly fixed at the conversations in London, and also since then, that the Dutch vessels would only sail outside of the danger zone and thus need not in any case perform war services for one of the contending parties which would not be compatible with neutrality.

Suddenly on March 7 last the London arrangement mentioned was broken when the agreement with us was withdrawn, which had been come to on the cardinal point, namely, that the ships of about 500,000 tons, to be given up in exchange for the advance of 100,000 tons of wheat, should not be used in the danger zone. The particularly objectionable character of this lay in the fact that allowing the use of Dutch vessels in the danger zone would lead to a breach of neutrality, not on account of the zone itself — this has nothing whatever to do with neutrality — but because it was clear that sailing through the zone, situated as it is around the associated countries of Europe, would mean at all events for a considerable part the transport of troops and munitions of war from America to her allies in Europe.

The Dutch official statement then proceeds to point out that the use of Dutch vessels as contemplated by the Entente Governments would in effect make Holland guilty of a violation of neutrality if it consented to such use, unless the vessels entering the danger zone should be unarmed and not engaged in the transportation of troops or materials of war; and if the Dutch ships were armed they would run a risk of armed conflict with German war vessels. The official note thereupon again insists that the President's statement is contrary to the facts and that the truth of the matter is in the language of the Dutch statement that:

The Powers interested felt themselves compelled, owing to the loss of ships, to supplement their tonnage by obtaining the use of a very considerable number of ships which did not belong to them but to Holland. It appeared to them that the Dutch Government was not able to grant permission to its ships to sail for associated interests otherwise than upon conditions dictated by neutrality, but in the opinion of the interested governments not sufficiently in accord with their interests, hence they decided to proceed to the seizure of the Dutch mercantile marine inasmuch as this was within their power.

The Dutch statement regards the actions of the United States in the premises, as contrary to law, and the correct attitude of Holland,

under the circumstances; not only to be no party to the transaction, but to oppose it; lest it be taxed with unneutral conduct, and states that the expressions of friendly regard with which the President's statement concludes are not to be regarded as a defense for the committing of a wrong. Thus the Dutch statement continues and concludes:

The Dutch Government considers itself obliged, especially in such serious circumstances as the present, to speak with great frankness; it is giving expression to the feeling of the whole of the Dutch people when it says that it sees in the seizure committed an act of violence against which it protests with all the force of its conviction and its injured national feeling. . . .

The American Government has always appealed to right and justice. It has always set itself up as the protector of small nations. That it now coöperates in a deed in diametrical opposition to these principles is a manner of acting which can not be balanced by any expression of friendship or assurances of any mild application of the wrong committed.

It is understood that the Dutch Government has transmitted a formal protest in the above sense to the United States, and that the United States has formally and fully replied to the protest of the Dutch Government, and to the statements contained therein. The text of the Dutch note has not been made public, nor has Secretary Lansing's reply been given to the press. A statement, however, was issued by the Department of State on April 13, 1918, which indicates the nature of the American reply without disclosing its terms, although apparently containing its argument.¹ After saying that the Netherlands' statement condemns the act without arguing the question of legality, and after stating that the United States will not argue the matter, as the right of the United States to seize neutral shipping voluntarily within its jurisdiction is so well known "as to render citation of precedent and of authority unnecessary," Secretary Lansing takes up the contention contained in the Dutch statement that the act of the United States violates the traditional friendship between the two countries and that it is inconsistent with the ideals of right and justice.

Secretary Lansing first calls attention to the alleged unfriendliness on the part of the United States in not supplying Dutch ships lying in American ports with the coal necessary to enable them to depart, and in not furnishing them with the cargoes of foodstuffs to convey to Dutch ports. On these points Mr. Lansing says that

¹ Printed in full in the *Official Bulletin*, Washington, April 13, 1918.

our own supply of bunker coal at seaboard has been inadequate for our pressing national needs. The cargoes which were demanded were largely of grain, of which our own reserves are all too low. "The bunkers, if granted, would have served to carry this grain to the Netherlands, where, as events have demonstrated, it was not then needed and where it would only have served to release equivalent foodstuffs for the enemy." It was clearly for the United States to determine whether it could supply the coal or the foodstuffs required and the conditions upon which coal or food should be furnished, and because the Dutch ships were only willing to perform services which, to quote the language of the statement, "it was clearly impossible for us to facilitate," Dutch ships were idle for many months in American waters. To enable them to resume the reciprocal undertakings, the temporary shipping agreement of January 25, 1918, proposed by the Netherlands Government, was accepted by the United States.

Mr. Lansing then considers the statement that the refusal of Germany had nothing to do with the failure of the Dutch Government to carry into effect the terms of the agreement, and in meeting this point Mr. Lansing calls attention to the statement contained in the official Dutch report of March 12 concerning the attitude of Germany and the desire of Holland to have the approval of the Imperial Government to its agreement. Mr. Lansing thereupon refers to a period subsequent to the report and says:

As recently as March 14, 1918, after the Netherlands Government had been informed that the situation had reached a point where the associated governments could see no alternative but requisitioning, a note was presented on behalf of the Netherlands Government, expressing the hope that Germany's objections might still be overcome, so as to permit at some future date complete performance of this agreement, which was to have been put into operation immediately and completely upon its conclusion nearly two months before.

After further adverting to the German attitude, Mr. Lansing continues, stating that the United States might have requisitioned Dutch ships within American waters immediately upon the outbreak of the war on April 6, 1917, though it refrained from doing so in the hope of coming to an agreement with Holland concerning their acquisition and use, and points out the manner in which the United States will exercise its undoubted right of seizing and employing the merchantmen of Holland voluntarily subjecting themselves to American jurisdiction:

At any time within a year the United States might have exercised its right to put these ships into a service useful to it. Yet it forebore and for many months patiently negotiated, first in Washington and then in London, until finally the temporary agreement of January 25 was entered into. No sooner was this agreement concluded than it broke down under German threats of violence which overruled the will of the Netherlands Government expressed therein. Then and then only did the United States take steps to accomplish through the exercise of its own right that which it was hoped could have been accomplished by agreement, and which the Netherlands Government had been willing in part so to accomplish.

The action taken leaves available to the Netherlands Government by far the greater part of their merchant marine and tonnage, which, according to estimates of their own officials, is ample for the domestic and colonial needs of the Netherlands. Shipping required for these needs will be free from detention on our part and will be facilitated by the supplying of bunkers. The balance is being put into a highly lucrative service, the owners receiving the remuneration and the associated governments assuming the risks involved. In order to insure to the Netherlands the future enjoyment of her merchant marine intact, not only will ships be returned at the termination of the existing war emergency, but the associated governments have offered to replace in kind rather than in money any vessels which may be lost by war or marine risk; 100,000 tons of bread cereal, which the German Government when appealed to refused to supply, have been offered to the Netherlands by the associated governments out of their own inadequate supplies, and arrangements are being perfected to tender to the Netherlands Government other commodities which they desire to promote their national welfare and for which they may freely send their ships.

Instead of the many authorities which could be invoked in favor of the right of a belligerent to seize neutral property voluntarily coming and found within its jurisdiction, one may be referred to as particularly in point. The authority referred to is the work entitled *Het Internationaal Maritiem Recht* (International Maritime Law), published in 1888 by the distinguished Dutch publicist, the late General J. C. C. den Beer Poortugael, at one time Minister of War, Member of the Council of State, and delegate on the part of the Netherlands to the first and second Hague Peace Conferences. In addition to these official titles, he was a member of, and took a very active interest in, the labors of the Institute of International Law. Whether in his official or unofficial capacity, he invariably supported humanitarian projects, and the spirit of aggression was as foreign to his nature as it is to his writings. General den Beer's treatment of the subject is very elaborate, so elaborate, indeed, that only a summary expression of his views may be laid in translated form before the reader.

In opening the discussion, the principle is first stated, and later

the application of it made by Count von Bismarck in the Franco-Prussian war.

As to principle, the distinguished Dutch authority says:

The right of seizure (*ius angaria*, *droit d'angarie*, *Admiralty right of prestation*) is that right which, according to many,¹ a belligerent State has, in case of extreme necessity, for self-preservation, to seize for its own use, the property, that is to say, the ships of neutrals.

Only an unusually pressing necessity of war can justify the exercise of the *droit d'angarie*.

It is always expected that when seizure of this sort is resorted to, it shall be effected with those courteous formalities that are due to the subjects of friendly Powers.

Full compensation for the value of the property and complete indemnification for the persons injuriously affected by the act, are required. . . .

To the contention that the neutral in consenting to the exercise of this right commits a violation of neutrality, General den Beer answers, and it would seem conclusively, that,

Whenever a belligerent, compelled by necessity, seizes upon that which he finds ready to hand, takes possession of it and disposes of it as he sees fit and assumes full liability for all damages, then the offense against neutrality disappears, because it is no longer the neutral, but the belligerent who performs the service.

As to the application of the right of requisition, General den Beer says:

On December 21, 1870, five English coal-barges which were in ballast at Duclair, by the Seine, were seized by the Germans, in order to close the river to some French gunboats. The commanders of the vessels received a written promise for compensation of full value. . . .

It seems that the manner of seizing the vessels had been regarded as effected in a coarse manner and as an offense against the English flag. On December 29 the English Government called upon Count v. Bismarck to give an explanation of the matter. On January 4, following, Bismarck expressed his regret about the incident, and promised an immediate investigation and adequate indemnification.

On January 8, Count Bernstorff, the Prussian Ambassador to London, received an additional telegram about the affair from Count Bismarck. It read as follows:

"The report of the German Commander, in reference to the English ships which were scuttled in the Seine, has not been received; but the main facts are known. Inform Lord Granville that we sincerely regret that our troops, to ward off an immediate danger, were compelled by necessity to seize British vessels and

¹ [Author's footnote.] It is defended, among others, by Azuni, *Droit maritime de l'Europe*, I, ch. 3, art. 5; and by De Cussy, *Phases et causes célèbres*, I.

that we shall accept claims for damages. We shall pay for the value of the vessels without waiting to find out by whom the compensation shall be granted. If the motives for the act are not fully justified, then the guilty shall be punished."

On January 25, Count Bismarck wrote from Versailles to the said Ambassador as follows:

"In continuation of my preliminary communication of the 4th, and of my telegram of the 8th of this month, I have the honor of sending you a copy of the report of the First Army Corps, regarding the sinking of English ships in the Seine, near Duclair, the drafting of which report has been delayed as a result of the many moves made by the Corps referred to.

"Your Excellency will get from it the same satisfaction which I felt in learning that the measure in question, however unusual the case, did not transgress the international usages of war. From the report it appears that a pressing danger was at hand and that, to ward it off, all other means were wanting; it was, therefore, a case of necessity which, even in time of peace, admits of the use or destruction of the property of foreigners, provided compensation is made. I take the liberty of calling attention to the fact that such a right, in time of war, has become the subject of a special law, the *jus angariae*, which, by so high an authority as Phillimore, is thus defined: that a belligerent Power demands and makes use of foreign ships, even if not found in one's own waters or in the ports and roadsteads of one's jurisdiction and even uses the crews for transporting troops, ammunition or other war material.

"I hope that the negotiation with the owners, whereto you have been authorized already, will lead to a settlement about the compensation for damages; if not, then it shall be referred to arbitrators. In the negotiation, the discrepancy as between the declarations of the First Army Corps and those of the English Consul at Dieppe, concerning the number of ships sunk, will be explained.

"I request Your Excellency, respectfully, to communicate this dispatch, together with annex, to the Secretary of State of Her Britannic Majesty, and to be good enough, at the same time, to present my apology for the delay, and the expression of my thanks to the government of Her Majesty, for the just appreciation of the military necessity, with which Lord Granville has viewed and treated this matter."

It may indeed be admitted that the requisition of neutral vessels lying within the territorial waters of a belligerent is an extreme right and not to be lightly resorted to. At the same time, if the right exists, — and in view of the imposing array of authority cited by Dr. Erich Albrecht in his brochure entitled, *Requisition of Private Neutral Property, Especially of Ships*, published in 1912,¹ its existence can not be successfully denied, — it is of course for the belligerent to determine when it shall exercise the right. This the United States has done,

¹ Dr. Juris. Erich Albrecht, *Requisitionen von neutralem Privateigentum, insbesondere von Schiffen*, Beiheft I zum VI. Bande der Zeitschrift für Völkerrecht und Bundesstaatsrecht, Breslau, 1912.

and has complied with General den Beer's requirements, which are also the requirements of international law.

But there is greater authority for the requisition of neutral vessels found in the port of a belligerent than that of den Beer Poortugael, however great that may be, for the greatest publicist of the eighteenth century declared it to be conformable to the practice of nations, and therefore the law of nations, and the greatest of Dutch publicists, and indeed of all international lawyers, has also recognized the right. Thus, Vattel says, in his *Law of Nations*, published in 1758:

Likewise, if a nation has urgent need of vessels, wagons, horses, or even of the personal labor of foreigners, it may make use of them, by force if consent can not be had, provided the owners are not under a like necessity themselves. But as its right to these things is merely that which necessity gives it, it must pay for the use it makes of them if it is able to do so. European practice is in accord with this principle. Foreign vessels which happen to be in port are pressed into service in a time of need, but payment is made accordingly.¹

And Grotius, who does not cease to be Dutch merely because his authority has become universal, makes the following comment:

Hence it may be gathered how it may be lawful for one who is waging an honorable war to seize a place which is situated on peaceful soil: namely, if there be a danger, not imaginary, but certain, of the enemy laying hold of that place and thence doing irreparable damage; secondly, if nothing be taken which is not necessary for this precaution, for example, if the mere custody of the place [be taken], leaving to the true owner the jurisdiction and revenues; finally, if it be done with the intention of restoring the custody [to the true owner] as soon as that necessity shall have ceased. "Enna was retained by an act either altogether evil or justifiable only on the ground of necessity," says Livy, because "evil" here [means] whatever departs even in the slightest degree from necessity. When the Greeks who were with Xenophon were absolutely in need of ships, they took the ships that were passing, on the advice of Xenophon himself, but in such a way as to preserve the lading untouched for its owners and to give to the sailors food and their pay. The first right, therefore, which remains out of the old community of goods after ownerships had been established, is, as we have already said, that of necessity.²

The action of the United States in requisitioning the Dutch ships within its jurisdiction is not justified by the President in his proclamation of March 20, and the statement accompanying it, on the plea of necessity. The existence of the right is stated, and because the

¹ Book II, Chap. IX, § 121; trans. by Charles G. Fenwick, *Classics of International Law*, Vattel, Vol. III, p. 150.

² Hugo Grotius, *De Jure Belli ac Pacis*, Bk. II, Ch. II, Par. 10; paragraph trans. by Herbert F. Wright.

right exists in the practice of nations and therefore in the law of nations, the United States requisitioned the ships in accordance with international law, and in so doing specifically expressed its intention to comply with the letter of the law by indemnifying the owners of the vessels for the deprivation of them, and to make good their loss if they should be destroyed through the action of the enemy. Necessity is not invoked to create the law; it is only stated in order to justify the exercise of the right in accordance with the letter and the spirit of the law.

JAMES BROWN SCOTT.

DUAL CITIZENSHIP IN THE GERMAN IMPERIAL AND STATE CITIZENSHIP
LAW ¹

The caption of this law, the interpretation of which has given rise to much discussion in this country, is as follows:

We, William, by the Grace of God German Emperor, King of Prussia, etc., enact, in the name of the Empire, with the consent of the Federal Council and Imperial Diet, the following.

The law was signed by the Emperor on board the yacht *Hohenzollern*, on July 22, 1913, and attested by Minister Delbrück, whence it is sometimes referred to as "the Delbrück Law." It declares that it is to go into effect on January 1, 1914, "simultaneously with a law revising the Imperial military law of February 11, 1888, relative to the revision of liability to military service"; an apparently significant place, time, and purpose of signature, in view of the international situation six months after the law went into operation.

The body of the law is composed of 41 sections, and is divided into four parts:

Part I. General Provisions

Part II. Citizenship in a Federal State

Part III. Direct Imperial Citizenship

Part IV. Final Provisions

The chief interest in this law, so far as the United States is concerned, centers in the question, Can a German citizen become by naturalization a citizen of the United States and at the same time also remain a German citizen?

¹ The full text, translated into English, is to be found in the Supplement to this JOURNAL, July, 1914, pp. 217, 227.

At first thought this would seem impossible, because the very idea of citizenship involves, according to the customary way of thinking, a sole and loyal allegiance to some one particular country; which, in exchange for this single allegiance, offers its protection to its citizen. The relation implies a reciprocal obligation, on the one side to serve and on the other to protect. This obligation would be nullified entirely by a double allegiance, in case the aims and interests of the two countries to which allegiance is owed should conflict.

In the law under consideration an entirely different position is taken. It is held and provided that the same person, being of German origin, may become by naturalization a citizen of a foreign country and at the same time retain German citizenship. This dual citizenship is definitely authorized in paragraph 2 of section 25 of this law, as follows:

A German who has neither his residence nor permanent abode in Germany loses his citizenship on acquiring foreign citizenship, provided the foreign citizenship is acquired as a result of his own application therefor.

Citizenship *is not lost* by one who before acquiring foreign citizenship has secured on application the written consent of the competent authorities of his home State to retain his citizenship. Before this consent is given the German consul must be heard.

In the second paragraph, just quoted, German citizenship is not terminated by naturalization in another country, if previous consent to retain it has been obtained from the competent authorities through a German consul. Here is a clear statement of the principle of dual citizenship and provision for securing it. If it means anything, it means that when the German authorities are willing to permit German citizenship to be retained by a German after naturalization, that is, to regard the naturalization as not causing the loss of German citizenship, they may legally and properly do so.

This, it must be confessed, is a new interpretation of citizenship; but it is none the less authoritative from the German point of view, which is that so long as a government is willing to permit citizenship to continue in the country of origin, it may properly do so, even though an additional citizenship has been acquired in another country. Although it is contrary to the generally accepted idea of a single allegiance, dual citizenship is here recognized as a perfectly normal status.

The reasoning upon which this conception is based is not stated in this law, but it may perhaps proceed along the following lines. Returning to the old conception that there can be no expatriation without

the permission of the country of origin, that country may, if it chooses, grant complete alienation, or it may grant alienation with permission to retain the original citizenship. In making a contract of naturalization with a foreign country, it may concede the right of the foreign country to claim the naturalized person as a citizen, but before this goes into effect it may also grant to this person a right, if he chooses, to retain at the same time his original citizenship. The person possessing this right, after naturalization in a foreign country, becomes, from the point of view of that country, one of its citizens, and it may claim for him the right to be treated as such; but, from the point of view of the country of origin, the person is still its citizen, although it has agreed to treat him, when this is insisted upon, as a citizen of the other country. From the point of view of the person himself, he is a citizen of both countries. This is dual citizenship.

This reasoning is, no doubt, grossly sophistical; but it is the only reasoning, apparently, on which dual citizenship can rest. Whatever validity it may seem to possess is the same whether a treaty of naturalization exists or not. The existence of a treaty does not affect this reasoning, unless the treaty contains an express renunciation of all former relations to the naturalized person by the state of his origin; for, without that renunciation, the state of origin may still privately retain with the person naturalized all the relations it has ever had with him, so far as he chooses to accept them and the state of origin to grant them. If dual citizenship can exist at all, it can exist as well under a naturalization treaty as without it, because the recognition that the naturalized person as a citizen of the foreign state is not incompatible with his remaining a citizen of his native country.

It has been claimed by certain expositors of this German law that, although the provision for dual citizenship exists in the law, it does not apply to persons of German origin who have been naturalized as citizens of the United States; the reason being that there is a treaty of naturalization with the United States. We have just seen, however, that, if dual citizenship is a normal status, it makes no difference whether a treaty exists or not, unless the treaty explicitly excludes dual citizenship and expressly renounces all relations with the naturalized person except as a citizen of the foreign state.

It is true that in section 36 of this German law the statement is made: "Treaties concluded by the Federal States with foreign countries prior to the going into effect of this law remain undisturbed."

What is the meaning of the statement that these treaties "remain undisturbed"? If dual citizenship is a normal status, of course these treaties remain undisturbed. There is nothing in that status to disturb them. There is no denial in this law that a naturalized citizen of a foreign country is really a citizen of that country, and is to be treated as such. This obligation, imposed by the treaty, is undisturbed. But, on the theory that dual citizenship is in any case permissible, these same persons, while being American citizens, may at the same time remain Germans; or, to give to dual citizenship the full benefit of its implications, they are "German-Americans."

The laws of the United States recognize no such hyphenated citizens. A person is either an American or he is not. If he is an American he is not in any legal sense a German, and if he is in any legal sense a German he is not an American. There can be but one allegiance.

This is a consequence of the nature of citizenship, not of a treaty. But those who defend the German law of dual citizenship pretend that, while it applies to the citizens of other nations, it does not apply to citizens of the United States, because of a treaty which prevents that application.

The so-called "Bancroft Treaties" of naturalization between the United States and certain German States, negotiated in 1868, if not abrogated by a state of war, or by the German formula, *rebus sic stantibus*, which German jurists affirm justifies the abrogation of any treaty when it is an advantage to abrogate it, may be assumed to be in force, but they do not undertake to define citizenship.

Let us take, for example, the treaty concluded on February 22, 1868, between the plenipotentiaries of the President of the United States of America and His Majesty the King of Prussia in the name of the North German Confederation. Assuming that this treaty is now in force, and that it comes under the rubric of "treaties concluded by the Federal States with foreign countries," although it has been assumed in the United States that naturalization terminates all relations between the naturalized citizen and the country of his origin, there is nothing in this treaty that affirms it. If dual citizenship, apart from any treaty, is a normal status, as the German law regards it, this treaty is wholly "undisturbed." A former German has become an American citizen. The German law of dual citizenship does not deny that. It does not deny anything which the treaty contains. It merely holds that, since dual citizenship is a normal status, this American citizen may remain

also a German; because the sovereign who agrees that he is, after naturalization, to be regarded as an American citizen, permits him to remain what he was before, a German citizen. This permission is, of course, no part of the treaty contract; but, if dual citizenship is a normal status, it does not affect the contract. The person, from the German point of view, is all that the treaty pretends that he is, a naturalized citizen of the United States. If the Imperial German Government is graciously disposed to regard him, in addition, as also still a German citizen, and informs him that he is one, is it not still within its sovereign right?

Undoubtedly, the validity of this ingenious reasoning depends entirely upon dual citizenship being a normal status. If citizenship is necessarily single, and not dual, and the act of naturalization, *ipso facto*, terminates absolutely citizenship in the state of origin, what becomes of this whole effort to set up in this German law the idea of dual citizenship in any direction, or for any purpose? Why was this plan put into operation six months before the outbreak of a general war, and made a correlate to the revision of the military law? What purpose was this new ambiguity respecting citizenship to serve? Why, with treaties or without treaties, should citizens of other nationalities have provisions expressly made for them to class them as Germans when they were not Germans, if it was an honest intention to respect the treaties of naturalization as they had always been interpreted?

The whole conception of dual citizenship, then, either falls to the ground, or it must be regarded as a scheme for obscuring and confusing the obligations of citizenship, leaving ill-instructed persons to suppose that they can claim citizenship in two countries at the same time, that they therefore have a divided allegiance, and that they can serve the interests of one country under the cover of citizenship in another. But the idea of dual citizenship does not fall to the ground as a mere sophistical speculation, a purely innocuous conception, like the fourth dimension of space. It assumes in this German law the form of a legal reality. It asserts that the same person may be at the same time a naturalized citizen of a foreign country and a German citizen. Saying to us, in the United States, that our citizenship is not affected by it, because a treaty exists and is not "disturbed," does not explain the adoption of this dual citizenship at the time and in the manner in which it became law in Germany for obviously military reasons. Taken in connection with the activities of naturalized citizens who were formerly

Germans, and may still regard themselves as Germans under this law, this new theory of citizenship deserves all the public attention it has received. How imperfectly the treaties, which are not "disturbed," protect the United States from the secret application of this dual conception of citizenship becomes evident when we ask ourselves, What is the substance of these treaties? The first article of the treaty with the North German Confederation reads: —

Citizens of the North German Confederation, who become naturalized citizens of the United States of America and shall have resided uninterruptedly within the United States five years, shall be held by the North German Confederation to be American citizens, and shall be treated as such.

A reciprocal agreement is made regarding citizens of the United States naturalized in Germany.

But what protection does this engagement afford against dual citizenship? Until this conception was brought into public controversy, it was probably never doubted that German citizenship and American citizenship are mutually exclusive; that is, that one can not be a German and an American at the same time. By every canon of sound judgment, when a person becomes an American citizen he ceases to be a German. The whole meaning and value of nationality turn upon that distinction. A "German-American" is a political impossibility. A choice, free from all ambiguity, must be made, or citizenship does not exist at all. To profess to be both German and American is an act of equivocation that obscures the claim to be an American citizen in any acceptable sense. But what security against this consequence is afforded by these treaties, which "remain undisturbed," if by private understanding between the person and the Imperial Government an original German citizenship also remains not only "undisturbed" but specifically legalized by German law?

If, as alleged, this dual citizenship was not intended to be applied in the United States, where was it intended to be applied? For what reason? In what conditions? Neither in this law itself, nor in any treaty with the United States, is this dual citizenship expressly excluded from application. The language regarding the effect of treaties employed in section 36 of the law is obviously vague and equivocal. The treaties themselves contain no definition of citizenship. If it was intended in drafting this German law to give assurance that dual citizenship would not be applied when naturalization treaties existed, why were not these treaties specified, or why was not language employed

that would make it perfectly plain that where such treaties previously existed the idea of duality could not and would not be applied? Why could it not have been stated plainly in this law, for example, when Germans become citizens in other countries where naturalization treaties exist, German citizenship wholly terminates with naturalization?

But there is still another method mentioned in this law of being and not being a citizen at the same time. "Citizenship is lost," according to section 17 of this German law, "by expatriation." But section 20 reads as follows:

Expatriation in one Federal State effects simultaneous expatriation in every other Federal State, *unless* the expatriated person *reserves citizenship* in another State by declaration before the competent authorities of the State granting expatriation.

A Prussian, under this section, it would seem, might "lose citizenship" in Germany by expatriation from Prussia, and at the same time regain it by reserving citizenship, let us say, in Saxony or Bavaria, or, better still, in Alsace-Lorraine, which has no treaty with the United States. If such a person should go to the United States and become naturalized as an American citizen, he would no longer be a Prussian; but he might, under the dual citizenship theory, be a Saxon or a Bavarian, or an Alsatian. In either case he would still be a German; for, by section 1 of this law, "A German is one who has citizenship in a Federal State or direct Imperial citizenship."

There remains the provision for acquiring this "direct Imperial citizenship," which applies to any person of German descent, no matter how far removed from an original German ancestor, or how long his forefathers may have lived in a foreign land. No residence or return to Germany is necessary for this restoration to German citizenship.

Paragraph 2 of section 33 reads:

Direct Imperial citizenship may be granted to a former German, who has not taken up his residence in Germany; the same applies to one who is descended from a former German or has been adopted as a child of such.

Such are the various provisions for retaining or reacquiring German citizenship. No one of them appears to demand any publicity in the country where the person has been naturalized and continues to reside. He may, therefore, possess and exhibit American naturalization papers, and may at the same time possess and conceal a German certificate of citizenship.

It would be unjust to conclude without evidence that naturalized American citizens of German origin have availed themselves of the Imperial provisions for dual citizenship, or would approve of this principle. Many of these citizens have come to this country, or are descended from those who have come, for the purpose of liberating themselves from German laws. Others, who came for different reasons, have acquired a sincere affection for American institutions. The loyalty of these excellent citizens is not impugned by anything in these comments, although the disloyalty of some naturalized citizens is assumed by the German lawmakers, who propose an equivocal allegiance. Whether the German law of dual citizenship has actually been applied in this country, and if so to what extent, are questions that lie outside the province of these comments. It is, however, evident from the purpose and provisions of the law itself and from the absence of effective limitation to its operation, that the door is open to a secret divided allegiance that may be extremely dangerous to the United States.

This danger, it is contended, is wholly imaginary; for the petition for American naturalization contains a sworn statement, that the petitioner renounces "absolutely and forever all allegiance and fidelity to any foreign prince," etc. "Absolutely and forever" must be taken, however, *cum grano salis*; for the petitioner is conceded the right, if he chooses, to resume his former nationality. But even allowing this pledge all possible force and validity, whoever appeals to this formula to prove that dual citizenship is innocuous to the United States seems to admit that the German law leaves open a door to the danger of double citizenship which is closed only by the American formula of naturalization. It is then not in the German law, nor yet in treaties, but in the honor of individuals and the vigilance of American law and administration that we must place our trust.

DAVID JAYNE HILL.

THE TRADING-WITH-THE-ENEMY ACT

The purpose of the Trading-with-the-Enemy Act, approved October 6, 1917, as stated in the report of the Senate Committee on Commerce recommending its adoption, is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations and to

permit, under careful safeguards and restrictions, such business intercourse as may be helpful to our own interests, conserving and utilizing but not confiscating enemy property found within the United States, and leaving to the courts and to future action of Congress the adjustment of rights and claims arising from such transactions.

Before taking up the terms of the Act, attention is called to the legal principles underlying legislation on this subject in its relation to international law, and these principles are so clearly stated by Assistant Attorney General Warren in the hearings before Congress that it is a pleasure to quote the following extract from his statement:

The question of what constitutes trade with the enemy and what constitutes an enemy within the purview of illegal trade are settled by the decisions of the English and of the American courts. These decisions constitute part of the common law of both countries. Strictly speaking, they are not founded on international law. They are purely domestic decisions, founded on such view of public policy as the courts of each country decide to adopt, paying attention, however, to the general consensus of other countries as to what shall constitute a wise public policy in dealings affecting outside countries.

It follows that when the legislature of a country enacts a statute relative to trade with the enemy containing provisions differing from the law laid down by the courts, it is not violating or departing from international law. It is simply expressing its views as to the need of change in the domestic law of the country. Each country must decide for itself what it shall regard as unlawful trade with the enemy, and also what persons it shall regard, for the purposes of such trade, as enemy.

Changes in economic, commercial, financial, military, naval, and political conditions may make it highly necessary that doctrines as to trade with the enemy laid down by our courts a century ago should be modified by the legislature either by making them more stringent or less stringent, according to the needs and conditions of the present day. The complexity of modern business demands far greater stringency in certain directions than the old cases decided by the courts provided for. On the other hand, the more enlightened views of the present day as to treatment of enemies makes possible certain relaxations in the old law.

Turning to the provisions of the Act, it appears that they are conveniently classified under five general divisions; the first defining the meaning of the word "enemy" and "trading" and other words as used in the Act, together with the transactions forbidden as unlawful, unless performed under licenses; the second giving the President discretionary power to suspend the provisions of the Act and providing for the licensing under this power of acts otherwise unlawful, if not incompatible with public interests; the third providing for the care and administration of the property and property rights of enemies and their allies during the war; the fourth, dealing with patents, trade-

marks and copyrights, and the licensing of enemy interests therein; and the fifth dealing with certain administrative requirements relating to the clearance of vessels, the export of gold and silver and other moneys; penalties for violation of the act; the jurisdiction of the United States courts for its enforcement, and the indirectly related question of foreign language publications.

Examining the Act in detail, it will be found that by Section 2, the expression "enemy," as used in the Act and in relation to enemy trading, has the technical meaning of any individual or body of individuals of any nationality resident or incorporated or doing business in the territory of any nation with which the United States is at war, or in territory of an ally of such nation, and may, by proclamation of the President, be extended to include any individual or body of individuals of enemy nationality wherever resident and wherever doing business, if the President shall find that the safety of the United States or the successful prosecution of the war shall so require.

Under this definition, individuals of enemy nationality residing in the United States, and corporations chartered in the United States, notwithstanding the nationality of the stockholders thereof, do not come within the purview of the term "enemy" unless so proclaimed by the President. It is understood, however, that the existence of enemy interests in such corporations is regarded by the Alien Property Custodian as justifying the designation of a representative to act for him on behalf of such interests. The importance of exercising control over these interests is clear.

The meaning of the words "to trade," as used in the Act, is also defined in Section 2, both specifically and generally, the general definition, which seems to include all of the others, being "to have any form of business or commercial communication or intercourse."

The forms of trading declared to be unlawful are set forth in Section 3, but it is further provided in Section 7 (*b*) that the enumeration of unlawful transactions in the Act shall not be construed as rendering legal any transactions which would be held illegal independently of the Act, unless expressly permitted under the terms of the Act, and Section 5 authorizes the President to issue licenses permitting the performance of such transactions.

It is impossible within the limits of an editorial comment to present adequately the interesting questions suggested by the very elaborate provisions of this Act, which comprises in all nineteen sections and as

many more subsections, but a general view of its scope and operation may conveniently be obtained from a brief examination of the authority vested in executive agencies for its enforcement.

On October 12, 1917, the President issued an executive order¹ vesting power and authority in designated officers and making rules and regulations under the Trading-with-the-Enemy Act and Title VII of the Act known as the Espionage Act, approved June 15, 1917.

By this order, the President established a War Trade Board, composed of representatives respectively of the Secretary of State, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Food Administrator, and the United States Shipping Board. This order vested the War Trade Board with the President's power and authority to issue licenses under terms and conditions not inconsistent with law, or to withhold or refuse licenses, for the exportation or importation of all articles (except coin, bullion, or currency), the exportation or importation of which may be restricted by proclamations previously or subsequently issued by the President under the Espionage Act or the Trading-with-the-Enemy Act.

The President also vested in this Board his power and authority, not vested elsewhere under the order, to issue pursuant to law, or to withhold or refuse, licenses "to trade either directly or indirectly with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade directly or indirectly for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy." The terms here quoted are in the exact language of the section of the Act prohibiting trading with the enemy, except under license.

By this order, the War Trade Board is further authorized to issue or to refuse to issue licenses to every enemy or ally of enemy doing business in the United States through an agency or branch office other than enemy or ally of enemy insurance or reinsurance companies, provided application was made for such licenses within a fixed time limit, and also licenses to use other names than those used by them at the beginning of the war, which is forbidden unless so licensed. The insurance or reinsurance companies excepted from these provisions are placed under the supervision of the Secretary of the Treasury, who

¹ Printed in the Supplement to this JOURNAL, January, 1918, p. 60.

is empowered to grant licenses to them. By a subsequent Executive Order,¹ dated December 7, 1917, all foreign insurance companies are prohibited from doing business within the United States after February 1, 1918, unless under license by the Secretary of the Treasury.

All administrative authority previously conferred by the President upon governmental agencies which were combined by this order into the War Trade Board was continued and made applicable to the War Trade Board, which is further empowered to take such measures as may be necessary or expedient to administer the powers conferred upon it, and to make such rules and regulations as may be necessary and proper for the exercise of these powers.

A War Trade Council is also established by this executive order, consisting of the officials whose representatives make up the War Trade Board, and this Council is required to act in an advisory capacity in such matters under the Trading-with-the-Enemy Act as may be referred to them by the President or the War Trade Board.

The Secretary of the Treasury is vested with the executive administration of any investigation, regulation or prohibition of, and the power to acquire information about any transaction in foreign exchange, the export or earmarking of gold or silver coin or bullion or currency, and any transfers of credit in any form and evidences of indebtedness or of ownership of property taking place between the United States and any foreign country, or between the residents of foreign countries, when participated in by any person within the United States.

He is also vested with the executive administration of the provisions of the Act making unlawful the transmission, into, or out of the United States, of letters or other tangible forms of communications, except in the regular course of the mail, and also the transmission of letters, messages, and all other forms of communication intended for delivery directly or indirectly to an enemy or ally of an enemy, and he is empowered to issue licenses to transmit out of the United States anything otherwise forbidden, if not inconsistent with law, or to refuse licenses for the same. General authority is conferred upon him to adopt measures and administrative procedure and use such agencies as may be deemed necessary by him for the purpose of such executive administration.

A Censorship Board for the censoring of communications of every description to and from the United States is established by this order,

¹ Printed in the Supplement of this JOURNAL, January, 1918, p. 59.

composed of representatives of the Secretary of War, the Secretary of the Navy, the Postmaster General, the War Trade Board, and the Chairman of the Committee on Public Information.

The Federal Trade-Commission is vested by this order with authority to issue licenses under terms and conditions not inconsistent with law, or to refuse the same, to any citizen of the United States or corporation organized in the United States to procure letters patent or trade-marks or copyrights in the country of an enemy or ally of enemy, and also to issue or refuse licenses to American citizens or corporations to use articles covered by enemy-owned patents, trade-marks or copyrights during the present war, upon regulated terms to be prescribed by this Commission. It is further vested with the power to order that an invention be kept secret and the grant of letters patent be withheld until the end of the war, whenever in its opinion the publication or granting thereof would be detrimental to the public interest.

The Postmaster General is vested with the executive administration of the provisions of the Act relating to the "printing, publishing or circulation in any foreign language of any news item, editorial, or other printed matter, respecting the Government of the United States or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war or any matter relating thereto, and the filing with the Postmaster at the place of publication, in the form of an affidavit, of a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper or publication, and the issuance of permits for the printing, publication and distribution thereof free from said restriction." He is also "authorized and empowered to issue such permits upon such terms and conditions as are not inconsistent with law and to refuse, withhold, or revoke the same."

The Secretary of State is vested with the executive administration of the provisions of the Act relative to "any person transporting or attempting to transport any subject or citizen of an enemy or ally of enemy nation, and relative to transporting or attempting to transport by any owner, master, or other person in charge of a vessel of American registry, from any place to any other place, such subject or citizen of an enemy or enemy ally." And he is also authorized and empowered "to issue licenses for such transportation of enemies and enemy allies or to withhold or refuse the same."

The Secretary of Commerce is vested with the power to supervise

the execution of the provisions of the Act relating to the clearance of any vessel, domestic or foreign, for which clearance is required by law.

The powers and duties of the Alien Property Custodian under this Act were the subject of an editorial comment in the last number of this JOURNAL, and a reëxamination of them here would, therefore, be superfluous. It may be convenient to note, however, that he is vested by this order with all the authority conferred upon the President by the Act, including the authority "to require the conveyance, transfer, assignment, delivery or payment to himself, at such time and in such manner as he shall prescribe, of any money or other properties owing to or belonging to or held for, by or on account of, or on behalf of, or for the benefit of any enemy or ally of an enemy, not holding a license granted under the provisions of the Trading-with-the-Enemy Act, which, after investigation, said Alien Property Custodian shall determine is so owing or so belongs, or is so held."

Attention is also called to the novel and important feature of this Act requiring that all money and quick assets belonging to enemy owners be paid over to the Alien Property Custodian and invested by him in United States bonds, to be turned over to the enemy owners or otherwise disposed of at the end of the war as Congress shall direct. This method of financing the war by the temporary conscription of enemy property has deservedly been the subject of much favorable comment.

CHANDLER P. ANDERSON.

ALSACE-LORRAINE

In the course of an address before the Sorbonne, delivered on March 1, 1918, M. Pichon, French Minister for Foreign Affairs, referred to the cession of Alsace-Lorraine and contrasted the reasons for such cession as given by the Imperial German Chancellor, Count von Hertling, and His Majesty William I, King of Prussia and first German Emperor.

M. Pichon is thus reported by the London *Times* of March 2, 1918:

None of the acts of violence thought of by a conqueror lacking in scruples to force himself upon a subjected population has succeeded in transforming French souls into German souls, or has made the descendants of those whose memory we honor today repudiate the long past of glory, of devotion, and of sacrifice which

unites them for all time to the country of their choice. The attachment of Alsace-Lorraine to France has roots other than those given by the representatives of Prussia and the House of Hohenzollern. If we are to listen to the German Chancellor, they are "purely German countries" which had been stolen from the legitimate owners by an oppression which continued for centuries until the day when the French Revolution took what was lacking from the previous theft. What an astonishing way in which to write history. It might stupefy us if it did not come from the successor of the man who falsified the Ems dispatch, and from the head of a government which, adding insult to a breach of faith, has been cynical enough to denounce Belgium for having brought about the invasion of her territory by a hostile plot against those who violated her neutrality. It is not we but the King of Prussia himself who undertook, in declarations made at the moment when he was criminally seizing our two provinces, to justify the pretension by which he is represented as having desired to do nothing but regain German territory by incorporating Alsace and Lorraine by right of conquest in his Empire.

Here is a document which proves to the hilt what I say. It is a letter which has already partly been made public. The Empress Eugenie, to whom it was addressed, has recently had the delicate thought of transmitting the original of that letter to our national archives. It was sent to her from Versailles on October 26, 1870, by the grandfather of William II. I quote from it:

"After having made immense sacrifices for her defense, Germany wishes to be certain that the next war will find her better prepared to throw back the attack which she may expect as soon as France has remade her strength and acquired allies. It is this sorrowful motive alone (*cette triste considération*) and not the desire to aggrandize a country and territory which is big enough, which forces me to insist upon territorial cessions which have no other object but that of pushing farther back the starting point of the French Armies which will come to attack us in future."

That is clear enough, and can anyone better sweep away the legend which Count Hertling endeavors to get believed, according to which the annexation of Alsace-Lorraine had as its origin in the mind of those who carried it out the desire to gain back for Germany German territory which had been taken from them by France? . . .

Gentlemen, the case is judged, and it is in vain that those who caused the war endeavor to avoid the tribunal of the people and the judgment of posterity by falsifications and omissions in documents which will be recorded by history. While the tragic debates of Bordeaux, whose anniversary we commemorate today, were proceeding a group of members of the National Assembly, of whom M. Clemenceau today is the sole survivor, said in an address to the representatives of the annexed Departments: "Whatever happens, you will remain our countrymen and our brothers, and the Republic promises you an eternal vindication." This pledge in the course of time has acquired a universal character which its authors can not have foreseen. It is not only France which says to Alsace and Lorraine, "You will come back to your country." It is the whole of the great Coalition which has been formed to bar the road to the disturbers of the world's peace and to establish upon justice an international organization; it is the voice of the Old and of the New World, of the East and of the West, an avenging, prophetic voice heard

high above the tumult of battle, and strong in the united sentiments of all who are actuated by justice, which tells the powers of death who are fighting against the powers of life that they can not hope for a victory which would be a disaster for humanity.

The letter from King William of Prussia is a document of no mean importance, and it is because thereof that the portion of M. Pichon's address relating to it has been quoted without comment on the part of the undersigned.

JAMES BROWN SCOTT.

SIR GRAHAM BOWER ON PRIZE LAW CHANGES

An interesting article from the November issue of the *Contemporary Review*, entitled "Capture or Control: A Study in the Development of Sea Law," supplemented by certain private letters from the author to the Editors of this JOURNAL, deserves comment.

The writer of the article, Sir Graham Bower, Retired, Commander R. N., after pointing out the changed conditions of naval war as contrasted with the time of Lord Stowell, argues for a change of rules to correspond.

The changed conditions are:

Merchant ships too big to search at sea, laden with a vast variety of goods and with an equal variety of shippers, enemy and neutral;

Ships of war to visit these merchantmen, ranging from the large cruiser to the submarine, many extremely vulnerable and with no carrying capacity;

A consequent tendency to destroy ships which can not be safely sent in for trial; disregard of the lives of passengers and crew during this process;

A corresponding tendency to arm merchant ships in their own defense;

An enormous expansion in the definition of contraband.

To meet these changed conditions are suggested the following changes:

The destruction of merchant shipping is absolutely prohibited; such ships accordingly may not be armed; a prize which can not be sent to the captor's jurisdiction may be interned in a neutral port; time of search to be limited to two days, with demurrage for overde-

tention; preëmption instead of confiscation for conditional contraband; merchant ships to be clearly and distinctively marked.

The novelties here briefly summarized are that merchant ships shall not be destroyed; that, therefore, they shall not be armed; but that they may be interned in a neutral port during the war. This internment presumably would include their crews.

Let me give the line of thought in the writer's own words addressed to the editors.

I feel strongly that the destruction of merchant ships must be ruled out from the permissible practices of warfare, but I feel that to compel a belligerent to take prizes into port would be to balance the scales unduly in favour of the British Empire, which has ports all over the world. So, in exchange for the abandonment of the exceptional right of destruction, we should, I think, concede the right of asylum, a right common in the treaties of the eighteenth century.

I feel also that there is something, and indeed a great deal, to be said in favour of the argument and proposal contained in Mr. Lansing's confidential letter 18th January, 1916, proposing the abandonment of the right to arm merchant ships.

Human progress—or at all events the advocates of humanity—have hitherto sought human progress in the separation of combatants from noncombatants, and it is impossible to say that a merchant vessel armed to resist visit and search is not a combatant.

So I propose to abandon the right to arm merchant vessels if the right of destruction is abandoned. The proposals, that is, the proposed grant of the right of asylum—and the abandonment of the right to arm merchant vessels—being both of them conditional on the abandonment of the right of destruction.

Sir Graham adds privately the resolutions adopted by the National Sailors' and Firemen's Union, as follows:

That in view of the enormous destruction of property and life at sea, it would be an advantage if in future wars an international law should be established insisting that all merchant ships should be unarmed, and that war vessels should have the right to search merchant ships and escort them to their home ports or to neutral ports to be interned during the progress of the war, and that it should be considered a crime for any war vessel to attack noncombatant merchant ships, and further that it would be an offence against the international law for noncombatant merchant vessels to carry armament of any description.

The sequence of argument in this resolution and in Sir Graham's article is perfectly clear. The destruction of merchant ships is abominable and barbarous. To be immune, however, they must be truly noncombatants and unarmed. Otherwise the U-boat, for instance, which might be sunk by a single shot, is justified in using its safest

weapon, the torpedo. But given this, shall the merchant ship go free if the captor has no unblockaded port to which to send her? Clearly this would give the premier maritime Power an undue advantage. Let the capture be interned in a neutral port, therefore, and you have a fair compromise.

In comment, let me say at the outset that a sharp enough distinction has not been drawn between the neutral and the enemy merchantman. What can ever warrant the destruction of a neutral trader! Under certain circumstances, of unneutral service, violation of blockade, carrying a disproportionate amount of contraband, she can be confiscated, but only after a judicial trial and condemnation, which means that she has been taken *infra praesidia* and has had her day in court. Otherwise you substitute the prejudiced impulse of the searching officer for the responsible finding of the judge.

We all recall our indignation at the Russian judgment in the *Knight Commander* case, where a young officer determined that railway metal and provisions were intended for Japanese military use in Corea, not for Japanese innocent use at home. Unable to send the ship to Vladivostock, he sank her.

It is true that both the United States Naval Code of 1900 and the Declaration of London (neither in force) allow the destruction of a neutral prize under highly exceptional conditions, subject to judicial review and with damages hanging over the captor who errs. And of course the safety of those on board must be insured. But until the present war such destruction was almost unknown. We must clear our minds of German methods and ask whether in normal wars it is reasonable and fair to the neutral to put an end to his existence during the war by internment on suspicion and with no judicial review. For it is inevitable that while his destruction (under normal rules) was highly exceptional, this internment, if legalized, would be abominably frequent. Some excuse could be found for this humane disposal of almost every neutral vessel, while the Declaration of Paris would be a dead letter. There is no fair compromise about this.

On the other hand, destruction of enemy merchant ships, harsh as it is, by present law is permitted. The career of the *Alabama* shows the length to which this can be carried and the effectiveness of the method. To substitute internment for destruction in such case is really a softening and humanizing of war. And since it would make the sacrifice of life unlikely, the price of uselessness for the term of the war is not un-

reasonable. Nevertheless there are difficulties in the way of Sir Graham's program.

The captured ship must be taken in by a prize crew, because she could not be trusted to go without compulsion. Could this prize crew be spared (from a U-boat for instance), and what would become of it in neutral jurisdiction? Is the interned merchant crew to be idle for the term of the war at its government's charges, or may it return to home and work? The plan says nothing as to this. Would the neutral assume such a burden, of policing and feeding and transportation, for the port of internment will be a remote one to avoid recapture? And is not the neutral exposed to trouble without end in playing his new and difficult rôle?

The United States during this war has been in turn neutral and belligerent, with a change of interest and a double point of view. Its experience, therefore, may have value in the discussion of Sir Graham's very real and serious problem. What did it try to insist upon when its neutral ships were sunk by submarines and others? Simply that no matter what the searching ship was, whether cruiser or armed trader or U-boat, it must observe the rules of cruiser warfare. This meant visitation duly carried out, search legally executed, the safety of the personnel honestly provided for. If the ship searching was incapable of all this, so much the worse for it. We would not permit the rules of the game to be changed to suit the new U-boat weapon. And this attitude seems to the writer everlastingly right.

Now Sir Graham's program, whether consciously or not, is based upon belligerent rather than neutral interest and makes changes to suit the submarine, instead of compelling the submarine to keep to its special field if it can not conform to the existing law. Is not this mistaken policy? It is conceivable that the seaplane can be so developed as to stop ships under threat of bombing. Must the rules of prize law be still further altered to favor the airplane or the Zeppelin? Are we not on safer ground if we say that the old rules shall govern and their violation be punished?

With other of Sir Graham's suggested changes I am more in sympathy.

Thus, a circumscribed detention at a belligerent port for purposes of search is not unreasonable, always provided that the enforced presence of the ship in a belligerent port gives no other rights over her than would be admitted on the high seas; that it is merely a matter of convenience.

Preemption, which has often been tried in the past and was provided for in some of our own early treaties, is a favor to the neutral and not objectionable. It will not, however, cure the tendency to call everything in sight contraband.

And to a seaman's eye, one would think, the marking of trading ships should be unnecessary, but it can do no harm unless it is improperly used.

Is not the real difficulty in the present situation, and in the future as we contemplate it, that the rules we have are not observed? That is why we are at war today, because Germany deliberately chooses to violate our rights at sea. Japan did not do so in the Russian war; we scrupulously observed the rules in our Spanish war; when a wanton calculating offender comes along and breaks all laws, the thing to do is not to change the law, but to punish the one who violates it.

THEODORE S. WOOLSEY.

PROPOSED NEUTRALITY OF FRANCE AT THE BEGINNING OF THE WAR

From time to time statements are made and documents find their way into print which throw light upon, and tend to clear up the situation existing before the outbreak of the war of 1914.

In this category fall the statements made in the month of March by M. Stephen Pichon, French Minister for Foreign Affairs, by M. René Viviani, formerly Prime Minister and French Minister for Foreign Affairs at the outbreak of the war, and of Dr. von Bethmann-Hollweg, the then Imperial German Chancellor.

In an address delivered by M. Pichon at the Sorbonne in Paris, on March 1, he made the following statement, and supported it by the text of a very important document. Thus he said, according to the London *Times*, of March 2, 1918:

The men who were not satisfied with having caused this most appalling war endeavored, on the very day when they made that war inevitable, to dishonor us by dragging us into cowardly complicity in the ambush in which they were leading Europe. I will show that by revealing the document which the German Chancellery, once it had been drafted, kept concealed in its most secret archives. You will soon see why. We have only become acquainted with this document recently. Its authenticity is beyond dispute. It bears the signature of Herr von Bethmann-Hollweg, and is dated July 31, 1914. It is known, notably by the German White Book, that on that day the Imperial Chancellor, in requesting Baron von Schoen to acquaint us with the declaration of a state of danger of war as re-

gards Russia, asked his Ambassador to request us to remain neutral, and gave us a delay in which to reply of 18 hours. What is not known and what I now reveal is that the telegram containing these instructions finished with these words:—

"If the French Government declares that it will remain neutral your Excellency will kindly state that we must, as a guarantee of that neutrality, demand the handing over of the fortresses of Toul and Verdun, which we shall occupy and hand back on the conclusion of the war with Russia. The reply to this last question must have reached here before 4 o'clock on Saturday."

That is how Germany wished to treat at the moment when she declared war. That shows her sincerity when she maintains that we forced her to take arms for her defense. That is the price she meant to make us pay for our turpitude if we had had the infamy to hand over Allied Russia to her and of repudiating our signature as Prussia repudiated hers in tearing up the treaty guaranteeing Belgian neutrality. She began by exacting, in order to come to an agreement with us to consummate her crime, that we should give up our two dearest and most glorious fortresses, one of which by the heroism of its defenders has increased its immortal renown. Who can say where Germany would have stopped had we been vile enough to take the crude bait of her ignominious perfidy?

The passage of the German White Book to which M. Pichon refers is the following telegram:

Russia has ordered mobilization of her entire army and navy, directed also against us in spite of our still pending mediation and although we have not resorted to any mobilization measures. We thereupon declared the threatening state of war, which is bound to be followed by mobilization unless Russia stops within twelve hours all warlike measures against us and Austria. Mobilization inevitably implies war. Please ask French Government whether they intend to remain neutral in a Russo-German war. Reply must be made within eighteen hours. Wire at once hour of enquiry. Utmost speed necessary.¹

In commenting upon this address and its disclosures, M. Viviani said, according to the London *Times* of March 4, 1918:

These revelations enable me now better to appreciate Baron von Schoen's attitude in my room on July 31, 1914. You will remember that it was on that occasion that he came to tell me that Germany felt herself obliged to declare a state of danger of war, and he then asked me what would be the attitude of France in the event of a conflict between Russia and Germany. The question was precise, and doubtless the German Ambassador expected one or other of the following replies, which he would have turned to profit:— Either he expected me to say,

¹ German White Book, No. 24, telegram of the Imperial Chancellor to the Imperial Ambassador in Paris on July 31, 1914 (Urgent). Supplement to this JOURNAL, Vol. 8 (1914), p. 409 (Annex 25); Diplomatic Documents Relating to the Outbreak of the European War, publication of the Carnegie Endowment, ed. by J. B. Scott, Part II, pp. 811-812.

"In such a case this is war," when he would have left me, imputing aggressive language to France; or else he expected me, stunned by the news he communicated, to display a weakness favorable to the dishonorable proposals which could not only not be considered for a moment by a representative of France, but which such a representative could not expose himself to receive. I replied to him, "France will consider her interests." Baron von Schoen, apart from telling me that he had to return on the following day for a reply to his questions, said nothing more. He did, indeed, come back, but he asked no question, and appeared, indeed, to take no further interest in that which he had put to me on the previous day.

The incident to which M. Viviani refers is thus related in the French Yellow Book under date of July 31, 1914:

Baron von Schoen finally asked me, in the name of his government, what the attitude of France would be in case of war between Germany and Russia. He told me that he would come for my reply to-morrow (Saturday) at 1 o'clock.

I have no intention of making any statement to him on this subject and I shall confine myself to telling him that France will have regard to her interests. The Government of the Republic need not indeed give any account of her intentions except to her ally.¹

According to the German White Book, under date of August 1, 1.05 p.m., the German Ambassador sent the following telegram to the Imperial Chancellor:

Upon my repeated definite enquiry whether France would remain neutral in the event of a Russo-German war, the Prime Minister declared that France would do that which her interests dictated.²

In reply to M. Pichon's statement and declaration, Dr. von Bethmann-Hollweg is reported by the Associated Press, in a dispatch dated March 16, 1917, to have said in an interview published by the Munich *Nueste Nachrichten*:

The Russian general mobilization furnished an indisputable proof that those factors which wielded power in Russia over the head of the Tsar desired war in all circumstances. My instructions to our Ambassador, Baron von Schoen, on July 31, 1914, have now been brought to light. But what have these instructions to do with the Russian mobilization and France's attitude? Russian regiments were already on the march before these instructions were written, and the French Government had no knowledge whatever of these instructions when replying to our

¹ French Yellow Book, No. 117, M. René Viviani, President of the Council, Minister for Foreign Affairs, to M. Paléologue, French Ambassador at St. Petersburg, Paris, July 31, 1914. Supplement to this JOURNAL, Vol. 9 (1915), p. 258; Diplomatic Documents, *ibid.*, Part I, p. 673.

² German White Book, No. 26, telegram of the Imperial Ambassador in Paris, to the Imperial Chancellor, August 1, 1.05 p.m. Supplement, Vol. 8, p. 410 (Annex 27); Diplomatic Documents, *ibid.*, Part II, p. 813.

question as to whether, in case of war with Russia, it would remain neutral. The French Government simply declared it would do what France's interests demanded. As is indeed well known, these instructions were never acted upon, consequently they had not the slightest influence on the actual course of events.

No one could seriously doubt that we had not only to fight against the Russian mobilization, but also to fight France. The Russo-French alliance had sufficiently shown by the entire policy pursued by both countries during recent decades that any war would be for us a war on two fronts; and, furthermore, our enemies' own publications in regard to the events of July, 1914, also testify that Russia herself had made sure of France's assistance.

I myself was not in the slightest doubt about this state of affairs when the instructions were sent to Baron von Schoen; but, precisely on that account, we could not disregard the eventuality that perhaps France might provisionally make a declaration of neutrality, which, however, could not be relied upon permanently, and that under cover of her apparent initial neutrality she might complete her preparations in order, at a moment when we were deeply engaged in the East, to fall upon us. I do not need to point out in what a desperate position we should have been placed in such a contingency. Only a neutrality which was securely guaranteed could afford us any protection against such an eventuality.

I would also like to remind French statesmen that Germany proposed yet another form of guarantee for France's neutrality, not in any way connected with the unfulfilled instructions. When the prospect opened which unfortunately rested upon a misunderstanding of the war being restricted through Great Britain's intermediation to the East we expressly declared that the declaration of France's neutrality would offer us complete security if guaranteed by Great Britain. Nothing can more unequivocally demonstrate that we had no intention whatever of assailing France's honor, let alone an attack on France.¹

The statements of these distinguished European gentlemen speak for themselves. They require neither comment, criticism, nor confirmation.

JAMES BROWN SCOTT.

THE DEFENSE OF INTERNATIONAL LAW

It is significant and helpful to note that in France there was formed in 1916 a Committee for the Defense of International Law.² At

¹ The London *Times*, March 18, 1918.

² This Committee has already published the following pamphlets:

Les Premières Violations du Droit des Gens par l'Allemagne, Luxembourg et Belgique, Louis Renault, 1917

Les Violences Allemandes à l'Encontre des non-Combattants, A. Pillet, 1917

Les Déportations du Nord de la France et de la Belgique en vue du Travail forcé et le Droit International, Jules Basdevant, 1917

L'Évacuation des Territoires occupés par l'Allemagne dans le Nord de la France, Février-Mars 1917, Paul Fauchille, 1917

the head of the *Comité pour la Defense du Droit International* was the late Louis Renault. Renault had long occupied the foremost place in the science of international law. His judicial temperament, simplicity of nature, lucidity of thought and expression, his spirit of sincere kindness, graced a primacy which was ungrudgingly conceded. It would be difficult even for one of enemy nationality to accuse Renault of degrading his intellect to support as scientific a contention which had its sole basis in national interest.

The Committee admits that

doubtless it is difficult to ask a jurist to condemn in express terms the conduct of his own government, even when he regards it as blameworthy in the highest degree. He is naturally inclined to defend it, more or less to identify the rule of law with the interest of his own country. But, nevertheless, there is a limit imposed upon men devoted to the study of law and entrusted with its teachings. Not everything should be approved, or, in accordance with prejudice, declared lawful and honorable. In the presence of certain acts silence can be demanded and laudation condemned. After the violation of law, in the presence of actions illegal or barbarous, nothing is more detestable than the attempt to justify them by unreal arguments; this leads to a downright perversion of the moral sense.

Whether or not this passage from the Committee's preface was drafted by Renault, it would express his sentiments.

It is with this spirit that Renault entered upon the discussion of *Les Premières Violations du Droit des Gens par l'Allemagne, Luxembourg et Belgique*, which was published in 1917, and later translated by Frank Carr, and published by Longmans, Green & Company. In the seventy-eight pages of this pamphlet the legal aspect of these violations of law, which have so often been discussed, are clearly stated, and Renault says, "in conclusion I wish to express my entire conviction of the guilt of Germany and the good right of Belgium." The second pamphlet in the series is by Professor Pillet, and is concerned with German violence against noncombatants.

The third, a pamphlet of sixty-nine pages, is by Professor Basdevant of Grenoble, and relates to deportations from northern France and from Belgium, for forced labor. After a clear and careful consideration of authorities, he finds no precedents for the deportations. Such acts are contrary to conventional and general international law, and in flagrant violation of approved practice, is Professor Basdevant's conclusion.

Monsieur Paul Fauchille, of the *Revue Générale de Droit International Public*, is the author of a pamphlet upon the evacuation of the territory

occupied by Germany in northern France. In this pamphlet, practice, the Hague and other conventions, and the German rules of war are cited in order to show the disregard of all rules which accompanied the evacuation. Devastation of fields, destruction of fertile lands, injury to water supplies, pillage of public and private buildings, are mentioned as examples of the martyrdom of northern France, that the Germans announced had been transformed into a "land of death." These acts have been justified by German commanders on the usual plea of "military necessity." Even the most liberal interpretation of this plea would not justify the destruction of artistic property, public monuments, and the like. Fauchille looks forward to penal reparation in the treaty of peace for these German violations of the law of war.

These pamphlets present clearly and briefly, from the French point of view, the illegal aspects of the German conduct of warfare. The names of the authors are sufficient to warrant the highest consideration of their conclusions. Behind these names stand the names of the distinguished French Committee for the Defense of International Law, who say

They propose to study scientifically some of the questions raised by the war, to apply to them solutions dictated by legal principles generally recognized, and by the conscience of the civilized world. Not indulging in loud declamation, they will fight the opinions of their enemies with keenness, and sometimes even with passion, but without permitting themselves to be drawn into abuse. Doubtless we do not forget that we are Frenchmen, that our country is engaged in a terrible war, but we will always remember that we are lawyers and that we must respect our science even in the fiercest struggles. To enlighten our conscience and that of our allies and neutrals, to state our common faith in the justice of our cause, such is the task we set before us, and which we shall endeavor to accomplish in all plainness.

GEORGE GRAFTON WILSON.

THE CLOSING OF THE CENTRAL AMERICAN COURT OF JUSTICE

On March 17, 1918, it was announced in the press that the judges of the Central American Court of Justice paid their respects to the President of Costa Rica and took leave of the court, which had ceased to exist because of the failure of a contracting Power to renew the convention creating the court when the term of ten years for which it was concluded had elapsed.

It is not necessary to enter upon a detailed examination of the convention creating the court, or of the reasons which caused one of the

contracting Powers to refuse to be a party to its continuance, as these various matters have been the subject of leading articles and of editorial comments in the JOURNAL.¹ It is, however, proper to express regret that the court should close its doors, inasmuch as it was avowedly the first international court of justice which had been created, and as its successful operation was constantly pointed to as a demonstration of the possibility of judicial settlement of disputes between nations.

Its jurisdiction was very broad, inasmuch as the contracting parties bound themselves, by its first article, "to submit all controversies or questions which may arise among them, of whatsoever nature and no matter what their origin, in case the respective departments of foreign affairs should not have been able to reach an understanding." Its jurisdiction, however, was not limited to the five countries creating it, but international questions between one of the Central American Governments and a foreign government could be submitted to it by special agreement. Nor was this all. Individuals might avail themselves of the court, in accordance with the following terms of Articles 2 and 3:

This court shall also take cognizance of the questions which individuals of one Central American country may raise against any of the other contracting governments, because of the violation of treaties or conventions, and other cases of an international character; no matter whether their own government supports said claim or not; and provided that the remedies which the laws of the respective country provide against such violation shall have been exhausted or that denial of justice shall have been shown. (Art. II.)²

It shall also have jurisdiction over cases arising between any of the contracting governments and individuals, when by common accord they are submitted to it. (Art. III.)³

The court has closed its doors, but they can be opened again. The Powers responsible for its creation can call it into being. The peace conference was held in Washington in 1907, where this convention was concluded under the auspices of Mexico and of the United States, and upon the invitation and request of these two Powers, or of the United States alone, a new conference can be called, or the parties to the original convention may be requested and indeed urged to renew it. The United States was not merely the host, it was the sponsor for the court, and the special representative of the United States, the late William I.

¹ This JOURNAL: 2: 121, 144, 835; 3: 434; 4: 416; 10: 344, 509; 11: 156, 181, 674.

Malloy, *Treaties and Conventions*, Vol. 2, p. 2400.

³ *Ibid.*, p. 2406.

Buchanan, was present at all the deliberations of the conference. Indeed, the court itself was the suggestion of Mr. Root, then Secretary of State, as was the conference of the Central American Powers which met in Washington. What one Secretary of State did another can do, and in view of the fact that the United States can not be supposed to be indifferent to the fate of an agency due to its counsel and advice, not to speak of its interest in the countries based upon its treaty with Nicaragua, which was the cause of the suit to which Nicaragua objected, it is to be expected that the United States will, on a proper occasion and when circumstances permit, endeavor to reinstall the court in the Palace of Justice built by the munificence of an American citizen, the portals of which are, for the present, closed to the appeal of justice.

JAMES BROWN SCOTT.

TREATMENT OF PRISONERS

In view of the current rumor, very likely without foundation, that American prisoners captured by Germany are threatened with specially severe treatment, it will not be amiss to call attention to our treaty agreement with her on this subject.

Article XII of the Treaty with Prussia of 1828 recites that the articles from the thirteenth to the twenty-fourth inclusive of the treaty concluded at Berlin in 1799 "are hereby revived with the same force and virtue as if they made part of the context of the present treaty." That these articles of 1799 are regarded as still binding by the Imperial German Government was shown in the correspondence over the wheat ship *William P. Frye*, sunk in January, 1915. The article of the Treaty of 1799 which covers the treatment of prisoners if the stipulating parties should be at war is numbered XXIV. It reads as follows:

And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge themselves to the world and to each other that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies or any other parts of Asia or Africa, but that they shall be placed in some parts of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison-ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive

enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for their own troops; that the officers shall also be daily furnished by the party in whose power they are with as many rations, and of the same articles and quality as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such ration as they shall allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war; and the said accounts shall not be mingled with or set off against any others, nor the balances due on them be withheld as a satisfaction or reprisal for any other article or for any other cause, real or pretended, whatever.

That each party shall be allowed to keep a commissary of prisoners of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment after they shall have been designated to him, such individual officer or other prisoner shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature and nations.

How very complete and how very modern!

THEODORE S. WOOLSEY.

THE NOBEL PEACE PRIZE

On December 10, 1917, the Nobel Committee awarded the peace prize for that year to the International Red Cross Committee of Geneva. This is one of five prizes established by the late Alfred Bernhard Nobel, a distinguished Swedish scientist, who died in 1896, and was known during his lifetime as the inventor of dynamite. In his last will and testament, dated November 27, 1895, he set aside his fortune as a fund, the income from which was to be divided into five equal portions, and awarded annually as prizes to those who had distinguished themselves in accordance with the following provisions of his will:

All the remainder of the convertible fortune that I shall leave on my death shall be disposed of as follows: the principal, converted by the executors of my will

into safe investments, shall constitute a fund, the interest on which shall be distributed annually as a reward among those persons who shall have rendered the greatest services to mankind during the preceding year. The sum shall be divided into five equal parts, one of which shall be awarded to the person who shall have made the most important discovery or invention in the field of physical sciences; another to the person who shall have made the most important discovery or introduced the best improvement in chemistry; a third to the person who shall have made the most important discovery in the field of physiology or medicine; a fourth to the person who shall have produced the most remarkable literary work from an idealistic point of view; finally, a fifth to the person who shall have done most or the best work in the interest of the brotherhood of peoples, of the abolition or reduction of standing armies, as well as of the formation and propagation of peace congresses. The prizes shall be awarded as follows: in physics and chemistry by the Swedish Academy of Sciences; in physiology or medicine by the Carolin Institute of Stockholm; in literature by the Stockholm Academy; finally, in the cause of peace by a committee of five members elected by the Norwegian Storting. It is my express will that nationality shall not be taken into account in conferring the prizes, so that the prize may go to the most deserving, whether he be a Scandinavian or not.

The amount of the fortune is estimated at nine million dollars, and the prize at approximately forty thousand dollars.

In the distribution of the peace prizes, the Nobel Committee has exercised a wise discretion, sometimes awarding it to an individual, sometimes dividing it between two held to have equal claims upon it, and sometimes to institutions, such as the Institute of International Law and the Permanent International Peace Bureau at Bern, so that there are two precedents for its award to the International Red Cross Committee of Geneva.

It is interesting to note in this connection that the first award was divided between Henry Dunant and Frédéric Passy, and that the Red Cross movement, of which the International Red Cross Committee of Geneva is the chief and supervising body, owes its origin to the activity of Henry Dunant. He was a physician, who happened to be present in Italy at the battle of Solferino, in 1859, between France and Austria, and he was so impressed with the lack of attention to the wounded that he published a little work in 1862, entitled *A Souvenir of Solferino*. This pamphlet created a profound impression, and advocated the treatment of wounded by neutrals, as well as belligerents. The idea was adopted by the Society of Public Utility of Geneva, of which Mr. Gustave Moynier was president, and by means of this society and the coöperation of these two benefactors of their kind, the Red Cross Societies have been called into being and to their initiative all inter-

national conventions dealing with the subject are due. The International Red Cross Committee, to which the prize of 1917 has been appropriately awarded, is not an official body in the sense that it sustains official relations to the various Red Cross Societies created and existing in the different countries of the world. It is, however, regarded by them as a parent society and is accorded a moral leadership. It publishes an international bulletin of the Red Cross Societies, by means of which it keeps in touch with the national societies. It calls the international conferences, of which there have been nine,—the first meeting in Paris, in 1867, and the last in Washington, in 1912, under the auspices of the Government of the United States.

The first award of 1910, to Henry Dunant, was a great and a deserved tribute, and the last award of 1917, to the International Red Cross Committee of Geneva, is not only a tribute to this great and beneficent institution, but indirectly a tribute to the memory of Henry Dunant as well.

The awards of the Peace Prize, including the first and the last, are as follows:

- 1901 Divided between Henry Dunant and Frédéric Passy.
- 1902 Divided between Elie Ducommun, honorary secretary of the Permanent International Peace Bureau at Bern, and Albert Gobat, Director of the Interparliamentary Bureau of Bern.
- 1903 Sir William Randal Cremer, member of Parliament, Secretary of the International Arbitration League.
- 1904 The Institute of International Law.
- 1905 Baroness Bertha von Suttner.
- 1906 Theodore Roosevelt, President of the United States of America.
- 1907 Divided between Ernesto Teodoro Moneta, President of the Lombardy Peace Union, and Louis Renault, member of the Institute of France, Professor of International Law at the University of Paris.
- 1908 Divided between Klas Pontus Arnoldson, former member of the Swedish Parliament, and Fredrik Bajer, former member of the Danish Parliament, honorary president of the Permanent International Peace Bureau at Bern.
- 1909 Divided between Auguste Marie François Beernaert, Minister of State of Belgium, member of the Belgian Chamber of Representatives, president of the Interparliamentary Council, member of the International Court of Arbitration, and Baron Paul Henri Benjamin Balluet d'Es-tournelles de Constant de Rebecque, member of the French Senate, president of the French Parliament Group, member of the International Court of Arbitration.
- 1910 The Permanent International Peace Bureau at Bern.

- 1911 Divided between T. M. C. Asser, Minister of State, member of the Council of State of the Netherlands, and Alfred Hermann Fried, Director of the *Die Friedens-Warte*.
- 1912 No award was made, but in 1913 the award of 1912 was made to Elihu Root, member of the United States Senate, formerly Secretary of State, President of the Carnegie Endowment for International Peace.
- 1913 Henri La Fontaine, member of the Belgian Senate, president of the Permanent International Peace Bureau at Bern.
- 1914 No award.
- 1915 No award.
- 1916 No award.
- 1917 The International Red Cross Committee of Geneva.

It will be observed that in 1912 the peace prize was not voted. This was in accordance with Section V of the By-Laws, which allows the Committee to postpone the award until the following year. In this instance the award was made in 1913 as of 1912. If, however, the members of the Committee should not make the award at the expiration of the year, the amount is added to the capital, unless the Committee, by a vote of three-fourths of its members, should decide to set it aside as a special fund. The income of the prize thus set aside may be employed otherwise than as a prize to advance the cause of international peace.

As no awards were made for 1914, 1915, and 1916, the amounts of the prizes for these years, each approximately forty thousand dollars, were added to the special fund of the Nobel Institute situated in Christiania, in accordance with Article V of the By-Laws, to be expended in the advancement of international peace.

JAMES BROWN SCOTT.

THE DAWN IN GERMANY? THE LICHNOWSKY AND OTHER DISCLOSURES

In the earlier part of March extracts appeared in the German press of a Memorandum written by Prince Lichnowsky, Imperial German Ambassador to Great Britain at the outbreak of the war of 1914, and more of this Memorandum is said to have been published in the Stockholm *Politiken*. In the account given in the London *Times* for March 15, 1918, it is said that:

The Memorandum was written by Prince Lichnowsky about eighteen months ago, for the purpose of explaining and justifying his position to his personal friends,

and only half-a-dozen typewritten copies were made. One of these copies, through a betrayal, reached the Wilhelmstrasse, and caused a great scandal, and another was communicated to some members of the Minority Socialist Party; but how it happened that a copy got across the German frontier forms a mystery to which *Politiken* declines to give any clue. Internal evidence, however, leaves no doubt in regard to the authenticity of the document. It is entitled "My London Mission, 1912-1914," and is dated Kuchelna (Prince Lichnowsky's country seat), August, 1916.

The most casual reading of the Memorandum will disclose why the Prince's Memorandum has created a sensation in Germany, where the views expressed by the former Ambassador to Great Britain have not been avowed by the authorities. Naturally, they have been discussed in the Reichstag, and statements have appeared from time to time in the press that the Prince would be tried and punished for treason, or sedition, or for some other heinous offense.

As regards the Reichstag, the London *Times*, in its issue of March 21, 1918, says in a dispatch from Amsterdam, dated the 19th:

In the Main Committee of the Reichstag the subject of Prince Lichnowsky's Memorandum was discussed. Herr von Payer, the Vice-Chancellor, read a letter from the Prince, in which he stated that the Memorandum had been written with a view to his future justification. These notes were intended for the family archives. They have found their way into wider circles by an "unprecedented breach of confidence." The Prince expressed regret for the incident.

Herr von Payer stated that the Prince had tendered his resignation, which had been accepted, but as he had been simply guilty of imprudence, no further steps would be taken against him.

A few of the more significant passages of the Memorandum are quoted, with summaries of omitted portions.

The Prince arrived in London in November, 1912, and found that "people had quieted down about Morocco," as an agreement had been reached concerning this question between France and Germany. The Haldane Mission had, he said, failed because Germany insisted upon a promise of neutrality, instead of contenting itself with a treaty with Great Britain insuring it against attacks from that country. However, Sir Edward Grey, then British Secretary of State for Foreign Affairs, had, to quote the Prince's exact language, "not given up the idea of reaching an understanding with us and he tried it first in colonial and economic matters." The purpose of Sir Edward Grey as stated by the German Ambassador was to settle outstanding controversies with France and Great Britain, and thereafter reach similar agreements with Germany, "not to isolate us," to quote the Prince, "but as far as

possible to make us partners in the existing union. As British-French and British-Russian differences had been bridged over, he wished also the British-German differences to be settled as far as possible and to insure world peace by means of a network of treaties," which the Prince said would probably have included an agreement on the naval question after an understanding had been reached obviating the dangers of war. Such was Grey's program in his own words, the Prince says, apparently quoting Sir Edward Grey, upon which the Prince comments that it had "'no aggressive aims, and involved in themselves for England no binding obligations, to reach a friendly *rapprochement* and understanding with Germany'. In short, to bring the two groups nearer together."

Prince Lichnowsky's disclosures concerning the attitude on the Balkan situation of Austria-Hungary and Germany, on the one hand, and Great Britain, on the other, are of the utmost importance, as they show an agreement of the Central European Powers to exclude Russia from Balkan affairs, to substitute their own influence for that of Russia, and to make of those states dependencies instead of making them independent, inasmuch as the Prince shows that Russian influence had really ceased in each instance with the independence of each of the Balkan States.

It will be recalled that Bulgaria, Greece, Montenegro and Serbia, after having beaten Turkey in what is known as the First Balkan war, fell out about the distribution of the spoils of victory, and that in a conference by their plenipotentiaries held in London they failed to agree. The consequence was the Second Balkan war, of Greece, Montenegro and Serbia, in which Roumania joined, against Bulgaria, which had insisted upon the lion's share of the common victory. In this second war Bulgaria was badly beaten, and the Treaty of Bucharest was concluded in 1913. In these various negotiations, Austria was an interested party, insisting that the principality of Albania should be created out of the spoils claimed by Greece, Serbia and Montenegro, and that Serbia be denied an outlet to the seas. The attitude of the Central German Powers and of Great Britain is thus stated by Prince Lichnowsky, who was then German Ambassador to London:

Soon after my arrival in London, at the end of 1912, Sir Edward Grey suggested an informal conversation in order to prevent a European war developing out of the Balkan war. The British statesman from the beginning took the stand that England had no interest in Albania on account of this question and was therefore not willing

to let it come to a war. He wished simply as an honest broker to mediate between the two groups and settle difficulties. He therefore by no means placed himself on the side of the members of the alliance, and during the negotiations, which lasted about eight months, he contributed not a little by his good will and effectual influence toward bringing about concord and agreement. Instead of assuming an attitude similar to that of the English, we without exception took the position prescribed to us from Vienna. Count Mensdorff represented the Triple Alliance in London. I was his second. My mission consisted in supporting his propositions.

So much for the attitude of the different Powers. Next as to the conduct of Sir Edward Grey and the consequences of the Balkan settlement conducted by Austria-Hungary and Germany. On these points the Prince said in his Memorandum:

Grey conducted the negotiations with circumspection, calmness, and tact. Whenever a question threatened to become complicated, he would draft a form of agreement which hit the matter right and always met approval. His personality enjoyed equal confidence from all members of the conference. We really again successfully stood one of the many tests of strength which characterize our politics. Russia had had to yield to us everywhere, so that she was never in a position to insure success of the Serbian wishes. Albania was created as an Austrian vassal state and Serbia was driven from the sea. The result of the conference was therefore a fresh humiliation for the Russian self-consciousness. As in 1878 and 1908, we had taken a stand against the Russian program without German interests being at stake. Bismarck knew how to mitigate the error of the Congress by secret treaty and by his attitude in the Battenberg question. The downward path again taken in the Bosnian question was continued in London, and when it led into the abyss it was not opportunely abandoned.

It is common knowledge that Austria-Hungary had picked Bulgaria as the winner in the Second Balkan war, and that its defeat was a blow to what it considered its prestige. The Prince calls attention to this in the following passage, and the absence of a specious pretext evidently was the reason in the Prince's mind, although he does not say so, for the outbreak of the war a year earlier than it actually occurred:

The idea of wiping it out by a campaign against Serbia seems soon to have gained ground in Vienna. The Italian revelations prove this and it is to be supposed that the Marquis San Giuliano, who very appropriately characterized the plan as a most dangerous adventure, preserved us from becoming involved in a world war as early as the summer of 1913.

But however interesting these passages may be, they are merely episodes in a memoir whose great value consists in the disclosure that before the outbreak of the war of 1914, Great Britain had not only, as is well known, settled its differences with France and Russia, but

also that Sir Edward Grey, representing Great Britain, had peaceably settled its controversies with Germany; that the terms of the treaty adjusting their conflicting claims to the satisfaction of Germany had not only been substantially agreed upon, but that the treaty itself had been drafted and initialed by Sir Edward Grey on behalf of Great Britain, and by Prince Lichnowsky on behalf of Germany.

It appears that the agreement between the two countries extended to colonial matters in Africa, as well as economic questions in Asia. In regard to the former, the Prince says, speaking of the treaty of 1898:

Thanks to the obliging attitude of the British Government, I succeeded in giving the new treaty a form which fully coincided with our wishes and interests. All of Angola up to the 20th degree of longitude was assigned to us, so that we reached the Congo region from the south; besides this there were the valuable islands of San Thomé and Príncipe. . . . Furthermore we received the northern part of Mozambique. . . .

"The British Government," the Prince says again, "showed the greatest obligingness in behalf of our interests. Grey purposed proving to us his good will and also furthering our colonial development in general, as England hoped to divert German development of strength from the North Sea and from Europe to the ocean. 'We do not begrudge Germany her colonial development,' said a member of the Cabinet to me."

Of the Asiatic situation, and especially of the Bagdad Railway, the Prince has much to say, and the purpose of the two governments appears to have been to divide Asia Minor into two spheres of influence. The economic enterprises were adjusted essentially in accordance with the wishes of the German Bank, and the railroad itself was prolonged to Basra, so that Bagdad was no longer constituted the terminal point of the road. An international commission was to attend to the navigation on the Shatt-el-Arab. Germany was to have a part in the construction of the harbor at Basra, and obtain rights in the navigation of the Tigris.

The success of these negotiations and their consequences not merely to the contracting Powers, but to the world at large, are thus stated by the German negotiator:

Under this treaty the whole of Mesopotamia as far as Basra became our interest zone, without prejudice to more ancient British rights in the Tigris navigation and the Wilcox irrigation establishments. Furthermore, we received the whole territory of the Bagdad and Anatolian railroad.

The coasts of the Persian Gulf and the Smyrna-Aidin railroad were considered as British economic territory, Syria as French, and Armenia as Russian. If both treaties had been concluded and published, an understanding would thereby have been reached with England which would forever have dispelled all doubts as to the possibility of an Anglo-German coöperation.

In connection with Prince Lichnowsky's Memorandum, the following three documents are to be considered.

The first is entitled "Terms of the Anglo-German Agreement of 1914," as corrected by Dr. Zimmermann, Under-Secretary at the outbreak of the war, and later Imperial German Secretary of State, and handed in 1916 to Mr. S. S. McClure.¹ It is thus worded:

1. The Bagdad Railway from Constantinople to Basra is definitely left to German capital in coöperation with Turkey. In the territory of the Bagdad Railway German economical working will not be hindered by England.

2. Basra becomes a sea harbor in the building of which German capital is concerned with 60 per cent and English capital with 40 per cent. For the navigation from Basra to the Persian Gulf the independence of the open sea is agreed to.

3. Kuwait is excluded from the agreement between Germany and England.

4. In the navigation of the Tigris, English capital is interested with 50 per cent, German capital with 25 per cent, and Turkish with 25 per cent.

5. The oil-wells of the whole of Mesopotamia shall be developed by a British company, the capital of which shall be given at 50 per cent by England, at 25 per cent by the German Bank, at 25 per cent by the "Royal Dutch Company" (a company which is Dutch, but closely connected with England). For the irrigation works there had been intended a similar understanding. The rights of the Anglo-Persian Oil Company, in which, as is known, the English Government is concerned, remained unaffected. This society exercises south of Basra, on the Schat-el-Arabia, as well as in all south and central Persia, a monopoly on the production and transport of oil.

6. A simultaneous German-French agreement leaves free hand to French capital for the construction of railways in southern Syria and Palestine.

Besides this, there is an agreement, already made before, between Germany and England, concerning Africa, with a repartition of their spheres of influence in Angola and Mozambique.

Finally there is to be mentioned the Morocco agreement, which established the political predominance of France in Morocco, but, on the other hand, stated the principle of "open door" to the trade of all nations.

The second is the dispatch of the Belgian Minister at Berlin to the Belgian Minister for Foreign Affairs, dated February 20, 1914, as officially published by the German Government in its collection of Belgian documents found in the Foreign Office at Brussels, upon the

¹ Mr. S. S. McClure's *Obstacles to Peace*, 1917, pages 40-42.

occupation of that city by German troops.¹ The material portion of this document, confirming Prince Lichnowsky's statements regarding the French agreement, is as follows:

The Franco-German agreement concerning Asia Minor, concluded very recently at Berlin after difficult negotiations and thanks to the personal intervention of the Chancellor, assures to France a large sphere of action and influence in Syria. She will be able to build a railway line starting from Beirout along the valley of the Orontes, back of the Antilebanon as far as Aleppo, the point of junction with the German lines. Another French line, also starting from Beirout, passing through Homs, will reach the Euphrates in the direction of the 35th parallel. M. Cambon showed me on the map these lines which are not yet known to the public. The coast of the Mediterranean between Alexandretta and Beirout will be neutralized; no railway can be built there either by Germany, or by France, be it along the coast or across the Antilebanon. A line of this sort was not considered necessary. It would arouse the hostility of the fanatic tribes of the Antilebanon, who close their country to Europeans and carry the products of the soil, the chief one of which is tobacco, to the harbor of Latakia themselves. The difficulty of the negotiations consisted principally in the exact delimitation of the French and German zones of influence (60 kilometers on each side of the railway), so as to prevent them from overlapping. In addition to this, France retains the railway concessions which she obtained from Turkey in the rich mineral district of ancient Capadocia, along the Black Sea, and the very profitable railway of Smyrna and Cassaba.

The third document is entitled "The Baghdad Railway. Complete Anglo-German Agreement," and, as contained in the London *Times* for June 16, 1914, is as follows:

BERLIN, June 15. (Through Reuter's Agency.)

The Anglo-German Agreement regarding the Baghdad Railway and Mesopotamia has been initialed in London by Sir Edward Grey and Prince Lichnowsky, the German Ambassador. A complete understanding has been reached on all questions at issue.

The agreement will not come into force until after the conclusion of the negotiations with Turkey, as on some material points the assent of the Porte will be necessary. The contents of the agreement can therefore not be divulged at present.

In another portion of the Memorandum the German Ambassador writes of the Serbian crisis that led to the war of 1914, and this section of his revelations is a damaging indictment of the policy which his country pursued. "On board the *Meteor* [the Kaiser's yacht], we

¹ Baron Beyens, Belgian Minister at Berlin, to M. Davignon, Minister for Foreign Affairs, February 20, 1914. — (Reports of the Belgian Representatives in Berlin, London and Paris to the Minister for Foreign Affairs in Brussels, 1905-1914.) — Issued by the Imperial German Foreign Office, 1915, under the title "Belgian Diplomats." No. 111, pages 131-132.

heard," he says, "of the death of the Archduke, the heir to the Austrian Throne. His Majesty expressed regret that his efforts to win the Archduke over to his ideas had thus been rendered vain." What these views were, the Ambassador evidently did not know.

Going to Berlin, he found von Bethmann-Hollweg, then Imperial Chancellor, much troubled at the outlook, and he complained of Russian armaments. The distrust and dislike of Russia appeared to pervade the Foreign Office. Dr. Zimmermann, the Under-Secretary for Foreign Affairs, stated that Russia was about to raise nine hundred thousand fresh troops, and "his words showed an unmistakable animosity against Russia, who, he said, was everywhere in our way."

The Prince refers to the Potsdam council on July 5, 1914, of which he was not informed at the time, and about which he contents himself with saying: "Subsequently I learned that at the decisive conversation at Potsdam on July 5 the inquiry addressed to us by Vienna found absolute assent among all the personages in authority; indeed, they added that there would be no harm if a war with Russia were to result." Apparently the die had been cast; Austria-Hungary was to take action against Serbia, and the attempt was to be made to localize the trouble. That is to say, the whole affair was to be looked upon as a bout between Austria-Hungary and Serbia, to which the European Powers might be spectators, but not participants. This is indicated by the Prince, who says: "I then received instructions that I was to induce the English press to take up a friendly attitude if Austria gave the 'death-blow' to the Great Serbian movement, and as far as possible I was by my influence to prevent public opinion from opposing Austria."

The Prince believed that England could not be counted upon and he warned his government against the projected punitive expedition against the little country; indeed, he says that he gave a warning against the whole project, which he described as "adventurous and dangerous," and he advised that moderation be recommended to the Austrians because he did not believe in the localization of the conflict. To this warning Herr von Jagow is reported to have answered that Russia was not "ready," that there would doubtless be a certain amount of "bluster," but that the firmer Germany stood by Austria, "the more would Russia draw back." The Prince states that the then German Ambassador, Count Pourtalès, had informed his government "that Russia would not move in any circumstance," and that these reports caused Germany to "stimulate" Austria-Hungary "to the greatest

possible energy." Sir Edward Grey's influence with Russia was the only hope of maintaining peace, and the Prince therefore begged him to urge moderation in Russia if Austria should demand satisfaction from Serbia. The Prince was not successful with the English press, which felt that exploitation of the assassination of the Austrian heir for political purposes could not be justified, and the English press urged moderation on Austria's part.

Upon the appearance of the ultimatum on July 24, giving Serbia twenty-four hours in which to accept the conditions, "the whole world," the Prince says, "except in Berlin and Vienna, understood that it meant war, and indeed world-war. The British fleet, which chanced to be assembled for a review, was not demobilized."

In order to prevent this catastrophe, the Prince apparently urged Sir Edward Grey to press for a conciliatory reply from Serbia, as the attitude of the Russian Government showed that the situation was very serious. Sir Edward Grey complied, and to quote the Prince's language, on the attitude of the British Government at this time, "the Serbian reply was in accordance with British efforts; M. Pashitch [the Serbian Premier] had actually accepted everything except two points, about which he declared his readiness to negotiate." The action of Sir Edward Grey and of Russia, which had already suggested modification, was indeed very important, so important that the Prince felt himself justified in saying: "If Russia and England wanted war, in order to fall upon us, a hint to Belgrade would have been sufficient, and the unheard-of note would have remained unanswered."

Sir Edward went over the Serbian reply with the German Ambassador, and they discussed Sir Edward's mediation proposal, "to arrange an interpretation of the two points acceptable to both parties." The French, the Italian, and the German Ambassadors were to have met under Sir Edward's presidency, and the whole difficulty could have been adjusted, the Prince saying, "It would have been easy to find an acceptable form for the disputed points which in the main concerned the participation of the Austrian officials in the investigation at Belgrade. Given good will, everything could have been settled in one or two sittings, and the mere acceptance of the British proposal would have relieved the tension and would have improved our relations to England." The Prince was so convinced of this that he urged it upon his government, saying that "otherwise a world-war was imminent, in which we had everything to lose and nothing to gain." The advice,

however, was rejected, as it was against the dignity of Austria, and Germany did not want to interfere in the Serbian affair which was the affair of its ally, and the Prince was directed to work for "localization of the conflict."

The Prince had no illusions as to the attitude of his government, or misgivings as to the result of Sir Edward's policy, for he says: "Of course it would only have needed a hint from Berlin to make Count Berchtold [Austrian Minister for Foreign Affairs] satisfy himself with a diplomatic success and put up with the Serbian reply. But this hint was not given. On the contrary, we pressed for war."

Germany not only refused Sir Edward's proposal, but had none of its own to make. The impression, the Prince said, became stronger that his country desired war, and after calling attention to the Russian appeals and declarations of the Russian Minister for Foreign Affairs, the Czar's humble telegrams, Sir Edward's repeated proposals, the warning of the Italian Foreign Minister, of the Italian Ambassador in Berlin, and his own urgent advice, the Prince concludes, "It was all of no use, for Berlin went on insisting that Serbia must be massacred."

"After that," the Prince says, "events moved rapidly. When Count Berchtold, who hitherto had played the strong man on instructions from Berlin, at last decided to change his course, we answered the Russian mobilization — after Russia had for a whole week negotiated and waited in vain — with our ultimatum and declaration of war."

With England's entry into the conflict the Prince's mission was at an end. "It was wrecked," he says, "not by the perfidy of the British, but by the perfidy of our policy."

Under the next section of the Memorandum the Prince has some reflections under the title of "Retrospect," written two years later, in which he ruefully comments that there was no place for him in a system which "tolerates only representatives who report what one wants to read," and he might have added in this connection what he says elsewhere, under a system which keeps an Ambassador uninformed of negotiations taking place elsewhere, and even has the counselor of the Embassy spy upon the Ambassador, report his conduct to the Foreign Office, and conduct negotiations behind his back.

After some observations that might be considered of a personal character, he says:

In spite of former aberrations, everything was still possible in July, 1914. Agreement with England had been reached. We should have had to send to Petersburg a representative who at any rate reached the average standard of political ability, and we should have had to give Russia the certainty that we desired neither to dominate the Straits nor to throttle the Serbs.

Germany, he insists, "needed neither alliances nor wars, but merely treaties which would protect us and others, and which would guarantee us an economic development for which there had been no precedent in history." The Prince even believes that his country could have taken up the question of the limitation of armaments, without needing to think of Austria, much less to follow whithersoever it cared to go, but, "I had to support in London a policy which I knew to be fallacious. I was punished for it, for it was a sin against the Holy Ghost."

There are passages from two sections which should be quoted in the Prince's own words, as the intervention of a third hand might convey the impression that they had been tampered with. They are the "Question of Guilt," and "The Enemy Point of View."

Under the first caption the Prince writes:

As appears from all official publications, without the facts being controverted by our own White Book, which, owing to its poverty and gaps, constitutes a grave self-accusation;

1. We encouraged Count Berchtold to attack Serbia, although no German interest was involved, and the danger of a world-war must have been known to us — whether we knew the text of the ultimatum is a question of complete indifference;

2. In the days between July 23 and July 30, 1914, when M. Sazonoff emphatically declared that Russia could not tolerate an attack upon Serbia, we rejected the British proposals of mediation, although Serbia, under Russian and British pressure, had accepted almost the whole ultimatum, and although an agreement about the two points in question could easily have been reached, and Count Berchtold was even ready to satisfy himself with the Serbian reply;

3. On July 30, when Count Berchtold wanted to give way, we, without Austria having been attacked, replied to Russia's mere mobilization by sending an ultimatum to Petersburg, and on July 31 we declared war on the Russians, although the Tsar had pledged his word that as long as negotiations continued not a man should march — so that we deliberately destroyed the possibility of a peaceful settlement.

In view of these indisputable facts, it is not surprising that the whole civilized world outside Germany attributes to us the sole guilt for the world-war.

Under the second caption he says:

Is it not intelligible that our enemies declare that they will not rest until a system is destroyed which constitutes a permanent threatening of our neighbors? Must they not otherwise fear that in a few years they will again have to take up arms, and again see their provinces overrun and their towns and villages destroyed? Were

those people not right who declared that it was the spirit of Treitschke and Bernhardi which dominated the German people — the spirit which glorifies war as an aim in itself and does not abhor it as an evil? Were those people not right who said that among us it is still the feudal knights and Junkers and the caste of warriors who rule and who fix our ideals and our values — not the civilian gentlemen? Were they not right who said that the love of duelling, which inspires our youth at the universities, lives on in those who guide the fortunes of the people? Had not the events at Zabern and the parliamentary debates on that case shown foreign countries how civil rights and freedoms are valued among us, when questions of military power are on the other side? . . .

That is what our enemies think, and that is what they are bound to think, when they see that, in spite of capitalistic industrialization, and in spite of socialistic organization, the living, as Friedrich Nietzsche says, are still governed by the dead. The principal war aim of our enemies, the democratization of Germany, will be achieved.

In the same issue of the London *Times* of March 28, 1918, from which this account of Lichnowsky's revelations have been summarized, there is a translation of a very interesting, and what the *Times* calls "astonishing memorandum" by one Dr. Wilhelm Mühlön, a Director of the Krupp Works at Essen at the time of the outbreak of the war, and for some time thereafter. Mühlön's memorandum figured in the debate in the Reichstag committee on March 16, and it is stated by the *Times* to have appeared in the *Berliner Tageblatt*, from which it is reproduced in translated form. It should be stated, before proceeding to the analysis of the memorandum, that Dr. Mühlön is now a resident of Switzerland.

It is natural that this memorandum should be considered in connection with that of the late German Ambassador to Great Britain, as it confirms some of his statements and furnishes precious information hitherto withheld from the public, as it apparently was from the Imperial Ambassador at London. Dr. Mühlön records conversations which he had about the middle of July 1914, with Dr. Helfferich, then Director of the Deutsche Bank in Berlin, and later Vice-Chancellor of the Empire, and with Herr Krupp von Bohlen and Halbach, head of the Krupp firm, of which Dr. Mühlön was a Director.

The Krupp people were interested in some large transactions in Bulgaria and Turkey, and apparently Dr. Mühlön saw Helfferich in regard to them. The Deutsche Bank was evidently unwilling to meet Dr. Mühlön's advances. Dr. Helfferich stated the reasons in a peculiarly frank and interesting manner:

The political situation has become very menacing. The Deutsche Bank must in any case wait before entering into any further engagements abroad. The Aus-

trians have just been with the Kaiser. In a week's time Vienna will send a very severe ultimatum to Serbia, with a very short interval for the answer. The ultimatum will contain demands such as punishment of a number of officers, dissolution of political associations, criminal investigations in Serbia by Austrian officials, and, in fact, a whole series of definite satisfactions will be demanded at once; otherwise Austria-Hungary will declare war on Serbia.

This implied a very considerable familiarity with the future as well as with the past, and it is not surprising, as German finance and German diplomacy are so interrelated, that one involves the other.

The future Vice-Chancellor had evidently and properly enough been taken into the secret, for Dr. Mühlön continues that Dr. Helfferich added:

The Kaiser had expressed his decided approval of this procedure on the part of Austria-Hungary. He had said that he regarded a conflict with Serbia as an internal affair between these two countries, in which he would permit no other state to interfere. If Russia mobilized, he would mobilize also. But in his case mobilization meant immediate war. This time there would be no oscillation.

This was probably a reference to the Moroccan question, in which war trembled in the balance, but peace eventually tipped the scales.

According to Helfferich, "the Austrians were extremely well satisfied at this determined attitude on the part of the Kaiser."

This disclosure made a very great impression upon Dr. Mühlön, who had feared a world-war, and apparently felt that it could not be avoided unless France and Russia reconsidered their attitude. Upon his return from Berlin to Essen it was natural that Dr. Mühlön should communicate this bit of news to Herr Krupp von Bohlen, and Dr. Helfferich had given him permission to do so, but it was not news to Herr von Bohlen, who had recently been with the Kaiser and who, according to Dr. Mühlön, "had spoken to him also of his conversation with the Austrians, and of its result, but he [evidently meaning the Kaiser] had described the matter as so secret that he [Krupp] would not even have dared to inform his own directors." Krupp confirmed Helfferich's statements, saying that the situation was very serious, and that "the Kaiser had told him that he would declare war immediately if Russia mobilized, and that this time people would see that he did not turn about." The subsequent events have shown that these two gentlemen were only too well informed, as on the very day indicated by Helfferich, the Austrian ultimatum appeared.

Meeting Dr. Helfferich after the ultimatum had been sent, that

gentleman is reported by Dr. Mühlon to have said "that the Kaiser had gone on his northern cruise only as a 'blind'; he had not arranged the cruise on the usual extensive scale but was remaining close at hand and keeping in constant touch"; there was nothing to do but to wait and to see what would happen, and according to Dr. Helfferich, as recorded by Dr. Mühlon, the Austrians did not expect the ultimatum to be accepted, and they were "acting rapidly, before the other Powers could find time to interfere."

In a subsequent conversation had with Herr Krupp von Bohlen, the statement of the German Government that Austria-Hungary had acted alone, without Germany's previous knowledge, was the subject of discussion, and such conduct on the part of Germany appeared to them inexplicable, as it has to many others, inasmuch as by so doing Germany apparently gave Austria a free hand, without informing itself as to what that hand would do. Herr von Bohlen, therefore, asked his friend, von Jagow, then Imperial Secretary of State for Foreign Affairs, with whom he was very intimate, who informed him that "he had nothing to do with the text of the Austro-Hungarian ultimatum, and that Germany had never made any such demands." Herr von Bohlen remarked that such action was inconceivable, and Herr von Jagow is stated to have replied that he, as a diplomatist, had naturally thought of inquiring as to the extent to which Austria had intended to go, but when called in "the Kaiser had," to quote Dr. Mühlon's memorandum, "so committed himself that it was too late for any procedure according to diplomatic custom, and there was nothing more to be done."

It was not to be expected that Lichnowsky's Memorandum would be allowed to pass without notice on the part of the Imperial officials whom the Prince had implicated in the misconduct of German affairs. On March 20, 1918, Herr von Jagow made some observations on the Memorandum in the *North German Gazette*. Certain minor matters are questioned, and some errors of detail corrected, but the former Imperial Secretary of State proceeds with the care and caution becoming one who was apparently writing from memory. Certain statements which von Jagow advances on his own account are of more than ordinary interest, and seem to be admissions of the general correctness of Lichnowsky's Memorandum, and in any event are to be considered as evidence coming from German sources that Great Britain had by negotiation removed great and outstanding differences which, but for

other reasons, would and should have prevented the two nations from falling out. Thus Herr von Jagow says:

When, in January, 1913, I was appointed Secretary of State I regarded an Anglo-German *rapprochement* as desirable, and an agreement about the points at which our interests touched or crossed as obtainable. In any case, I wanted to try to work in this sense. A main point for us was the Mesopotamia-Asia Minor question — the so-called Baghdad policy — because it had become for us a question of prestige. If England wanted to push us out there, a conflict seemed, indeed, to me to be hardly avoidable. As soon as possible I took up in Berlin the settlement about the Baghdad Railway. We found the English Government ready to meet us, and the result was the agreement which had almost been completed when the world-war broke out.

At the same time the negotiations about the Portuguese colonies, which had been begun by Count Metternich and continued by Baron Marschall, were resumed by Prince Lichnowsky. I intended to begin later on — when the Baghdad railway question, in my opinion the most important question, had been settled — further agreements about other questions, in the Far East, for example.”¹

This would seem to be an admission that agreement was reached with Great Britain concerning the Bagdad policy and the Portuguese colonies, and of the correctness of Lichnowsky's account of these transactions. The reason for the refusal to complete and to publish these treaties at that time is thus stated by the former Imperial Secretary:

With well-justified prudence we intended to postpone publication until an appropriate moment, when the danger of adverse criticism was no longer so acute — if possible simultaneously with the publication of the Baghdad Treaty, which also was on the eve of conclusion. The fact that *two* great agreements had been concluded between England and us would have made the reception considerably more favorable, and would have helped us over the defects of the Portuguese agreement. Our hesitation was due to respect for the effect of the agreement, with which we desired to achieve an improvement of our relations to England and not a fresh disturbance of them. It is true — although this was a secondary consideration — that we were also influenced by the aims which we were then making to secure economic interests in the Portuguese colonies; these interests would, of course, have been more difficult to secure if the agreement had been published.

Herr von Jagow, like Prince Lichnowsky, pays his tribute to Sir Edward Grey, but reproaches him with not preventing the war. This would indeed be a serious charge, if Sir Edward could have prevented it, but it is at any rate less serious than that he had begun it. On this point and the apparent disinclination of the English people to go to war, Herr von Jagow remarks:

¹ Reproduced in part, in English translation, in the *London Times*, April 1, 1918.

I am by no means willing to adopt the opinion, which is at present widely held in Germany, that England laid all the mines which caused the war; on the contrary, I believe in Sir Edward Grey's love of peace and in his serious wish to reach an agreement with us. But he had involved himself too deeply in the net of Franco-Russian policy. He could no longer find the way out, and he did not prevent the world-war — as he could have done. Among the English people also the war was not popular, and Belgium had to serve as a battlefield.

It is with difficulty that the undersigned has resisted the temptation of an observation here and there of his own, but as a citizen of a belligerent country, he has endeavored to refrain from comment, and to allow the views of the various personages quoted or summarized to speak for themselves. But what would seem prejudice on the part of a citizen of a country at war with the Imperial German Government may not seem to be so on the part of a German subject. Therefore, a portion of a letter is quoted in conclusion, written from Bern, to the then Imperial Chancellor, Herr von Bethmann-Hollweg, under date of May 7, 1917, by Dr. Wilhelm Mühlton, who, after the outbreak of the war, had, in 1916, negotiated treaties on behalf of Germany with Roumania before its entry into the war. This letter is printed in the London *Times* of April 4, 1918, and is said to have been given to the correspondent of the Parisian Socialist journal *L'Humanité* and published by him with the writer's consent:

However great the number and weight of the mistakes accumulated on the German side since the beginning of the war, I nevertheless persisted for a long time in the belief that a belated foresight would at last dawn upon the minds of our directors. . . .

But since the first days of 1917 I have abandoned all hope as regards the present directors of Germany. Our offer of peace without indication of our war aims, the accentuation of the submarine war, the deportation of Belgians, the systematic destruction in France, and the torpedoing of English hospital ships have so degraded the governors of the German Empire that I am profoundly convinced that they are disqualified forever from the elaboration and conclusion of a sincere and just agreement. The personalities may change, but they can not remain the representatives of the German cause.

The German people will not be able to repair the grievous crimes committed against its own present and future, and against that of Europe and the whole human race until it is represented by different men with a different mentality. To tell the truth, it is mere justice that its reputation throughout the whole world is as bad as it is. The triumph of its methods — the methods by which it has hitherto conducted the war both militarily and politically — would constitute a defeat for the ideas and the supreme hopes of mankind. One has only to imagine that a people exhausted, demoralized, or hating violence, should consent to a peace with

a government which has conducted such a war, in order to understand how the general level and the changes of life of the peoples would remain black and deceptive.

As a man and as a German who desires nothing but the welfare of the deceived and tortured German people, I turn away definitely from the present representatives of the German *régime*. And I have only one wish — that all independent men may do the same, and that many Germans may understand and act.

That the soul of Germany, as its friends in other days have seen it or felt it to be, may regain the ascendancy, and that the ideals of Kant may prevail over the practices of Clausewitz and his successors, is the hope and prayer of the undersigned.

JAMES BROWN SCOTT.

CHRONICLE OF INTERNATIONAL EVENTS

Abbreviations: *Ann. sc. pol.*, Annales des sciences politiques, Paris; *Arch. dipl.*, Archives Diplomatiques, Paris; *B.*, boletín, bulletin, bollettino; *P. A. U.*, bulletin of the Pan American Union, Washington; *Cd.*, Great Britain, Parliamentary Papers; *Clunet*, J. de Dr. Int. Privé, Paris; *Current History* — Current History — A Monthly Magazine of the New York Times; *Doc. dipl.*, France, Documents diplomatiques; *B. Rel. Ext.*, Boletín de Relaciones Exteriores; *Dr.*, droit, diritto, derecho; *D. O.*, Diario Oficial; *For. rel.*, Foreign Relations of the United States; *Ga.*, gazette, gaceta, gazzetta; *Int.*, international, internacional, internazionale; *J.*, journal; *J. O.*, Journal Officiel, Paris; *L.*, Law; *M.*, Magazine; *Mém. dipl.*, Mémorial diplomatique, Paris; *Monit.*, Belgium, Moniteur belge; *Martens*, Nouveau recueil général de traités, Leipzig; *Official Bulletin*, Official Bulletin of the United States; *Q.*, Quarterly; *Q. dip.*, Questions diplomatiques et coloniales; *R.*, review, revista, revue, rivista; *Reichs G.*, Reichs-Gesetzblatt, Berlin; *Staats.*, Staatsblad, Netherlands; *State Papers*, British and Foreign State Papers, London; *Stat. at L.*, United States Statutes at Large; *Times*, The Times (London).

November, 1910.

- 5 GERMANY — RUSSIA. Treaty of alliance signed. English text: *London Evening News*, Jan. 6, 1911; French text: *Le Matin*, Jan. 7, 1911.

June, 1914.

- 15 GREAT BRITAIN — GERMANY. Agreement initialed relating to Baghdad, Mesopotamia, etc. *London Times*, June 16, 1914; This JOURNAL vol. 8, p. 638; *N. Y. Times*, April 21, 1918; text: McClure — *Obstacles to Peace*, pp. 40-41 (Boston, Houghton Mifflin Co., 1917).

April, 1915.

- 26 ITALY — GREAT BRITAIN — FRANCE — RUSSIA. Secret agreement relative to the entrance of Italy into the war. Made public by the Bolshevist Government of Russia. Text: *N. Y. Evening Post*, Jan. 26-28, 1918; *Current History*, 7 (pt. 3):495.

August, 1916.

- ROUMANIA — GREAT BRITAIN — FRANCE — RUSSIA. Treaty signed relative to the entrance of Roumania into the war. Text made public by the Bolshevist Government of Russia. Text: *N. Y. Evening Post*, Jan. 25-28, 1918.

July, 1917.

- 9 GERMANY — NETHERLANDS. Agreement signed submitting to an arbitration tribunal the question as to the legality of the internment of a German U-boat by the Netherland Government. Announcement made that the tribunal would consist of five naval officers, one each from Germany, the Netherlands, Argentine Republic, Denmark, and Sweden, and would meet at The Hague. *Clunet*, 45:429.

September, 1917.

- 11-17 RED CROSS CONFERENCE. Conference of Neutrals held in Geneva. Text of protocol de cloture: *Clunet*, 45:348.

October, 1917

- 5 SWITZERLAND. Federal Council passed a decree for the control of prisoners of war and civil prisoners, intended to protect Swiss neutrality. *Clunet*, 45:419.
- 18 FRANCE — PORTUGAL. Accord signed relative to military authority. *Clunet*, 45:418.

November, 1917.

- 23 ECUADOR — URUGUAY. Parcel post convention signed. *Official Bulletin*, Jan. 5, 1918.
- 28 CHINA. Province of Ninpo declared its independence of Central Chinese Government. *New East*, Jan. 18, 1918, p. 96.
- 30 CHINA. Mandate issued appointing Wang-Shih-Chen prime minister. *New East*, Jan. 1918, p. 96.
- 30 CHINA. Wang-tai-sieh, Acting Premier and Minister for Foreign Affairs, and five other members of the cabinet resigned. *New East*, Jan. 1918, p. 96.

December, 1917.

- 2 RUSSIA. Text of Bolshevik peace terms submitted to Central Powers. *Current History*, 7 (pt. 2):257.
- 2 CHINA — DENMARK. Wireless contract reported with Danish firm which it is believed intends to use German money in developments. Great Britain and Japan protested against the contract, and on Jan. 8 the Chinese Government notified the British and Japanese Governments that the contract had been canceled. *New East*, 2:96, 206.
- 4 CHINA. Chinchow in Hupeh declared its independence of the Central Chinese Government. *New East*, Jan. 1918, p. 96.

December, 1917.

- 11 CHINA. Shantung representatives protested to the government against the assumption by Japan of civil administration rights in their province. They were informed that Baron Hayashi had promised a satisfactory answer on the subject shortly. *New East*, 2:207.
- 12 CHINA — JAPAN. Japanese marines landed at Swatow to protect foreign interests. *New East*, 2:207.
- 14 CHINA — JAPAN. Provincial assembly at Kiangau resolved to invoke the Chinese Government to protest against the establishment of civil administration by Japan in Shantung. *New East*, 2:207.
- 19 RUSSIA. A government was formed in the Caucasus, with E. P. Gegeohkari, leader of the social democrats, as President. *Current History*, 7 (pt. 2):227.
- 20 CHINA. Hsiang-yang declares its independence of the Central Chinese Government. *New East*, 2:207.
- 20 AUSTRIA. Austrian Lower House adopted a resolution calling for peace based on principle of no annexations and no indemnities and for the use of Russia's good offices in conveying the offer to the Entente Allies. *Current History*, 7 (pt. 2):228.
- 21 GERMANY. A government bureau for studying questions relating to peace was opened in Berlin, with Dr. Karl Helfferich as head. *Current History*, 7 (pt. 2):228.
- 22 GERMANY — RUSSIA. Peace negotiations begun at Brest-Litovsk. A provisional agreement was reached Dec. 30. Negotiations were resumed Jan. 11, and the armistice extended another month on Jan. 12. On Jan. 14 the conference adjourned, sessions being renewed Jan. 29. On March 3 a peace treaty was signed, which was ratified by the All-Russian Congress of Soviets on March 14. Summary of text: *N. Y. Times*, March 14-16, 1918; *Current History*, 8 (pt. 1):61; partial text of proceedings of conference: *Holland News*, 29:1994; text of treaty, *Current History*, 8 (pt. 1):54.
- 26 HAITI. Decree issued forbidding the export of foodstuffs to countries at war with the United States. *Official Bulletin*, Jan. 5, 1918; *Le Moniteur*, Dec. 26, 1917.
- 28 FRANCE. M. Pichon, Minister for Foreign Affairs, stated war aims and peace terms of France. Text: *Current History*, 7 (pt. 2):210.

December, 1917.

- 30 RUSSIA. Bessarabia declared its independence as the Moldavian Republic to form part of the Russian Federated Republic. *Current History*, 7 (pt. 2):228.

January, 1918.

- 2 GERMANY — RUSSIA. Peace terms submitted to the Bolshevik Government at Brest-Litovsk. Text: *N. Y. Times*, Jan. 3, 1918.
- 2 GERMANY — SWITZERLAND. Swiss troops on duty on Lake Constance fired on German lake steamer *Kaiser Wilhelm*, which entered Swiss territorial waters. *Current History*, 7 (pt. 2):228.
- 3 FINLAND — SWEDEN. Independence of Finland recognized by Sweden. *N. Y. Times*, Jan. 7, 1918.
- 5 GREAT BRITAIN. Premier Lloyd George stated the war aims of the Allies. *Current History*, 7 (pt. 2):228.
- 5 GERMANY. Blockade zone declared around the Cape Verde Islands, Daker and neighboring coasts. Text of order: *Official Bulletin*, Jan. 30, 1918.
- 5 GREAT BRITAIN. Premier Lloyd George, in speech before London Trade Union Conference on Man Power, stated British terms of peace. Text: *Current History*, 7 (pt. 2):266.
- 6 PERSIA. Reported that Persia had opened negotiations with Russia and Turkey for the evacuation of Persia by Russian troops. *Current History*, 7 (pt. 2):228.
- 7 FINLAND — FRANCE. Independence of Finland recognized by France. *N. Y. Times*, Jan. 8, 1918.
- 7 UKRAINE — FRANCE. France sent high Commissioner to the Ukraine. *N. Y. Times*, Jan. 8, Feb. 12, 1918.
- 7 FINLAND — GERMANY. Chancellor von Hertling announced that Germany had recognized Finland as a republic. *N. Y. Times*, Jan. 8, 1918.
- 7 TRADE-MARKS. Announcement made of the establishment of an International Registration Trade-mark Bureau at Habana for the northern group of the American Republics. *Official Bulletin*, Jan. 7, 1918.
- 8 UNITED STATES. President Wilson addressed Congress specifying terms of peace. *Official Bulletin*, Jan. 12, 1918.
- 8 ARGENTINE REPUBLIC — UNITED STATES. Agreement signed to stabilize exchange between the two countries and check de-

January, 1918.

- preciation of American dollar on Argentine market. Text: *Official Bulletin*, Jan. 8, 1918.
- 10 RUSSIA. Republic of the Don declared its independence, with General Kaledine as President and Prime Minister. *N. Y. Times*, Jan. 12, 1918.
- 10 FINLAND. Denmark and Norway recognized the independence of Finland. *Current History*, 7 (pt. 2):228.
- 13 RUSSIA — GERMANY. A further armistice of one month agreed to. *N. Y. Times*, Jan. 13, 1918.
- 14 RUSSIA — ROUMANIA. Roumanian minister to Petrograd and entire staff arrested by Bolshevist government in retaliation for arrest of Bolshevist leaders by Roumania. They were released on Jan. 16. Lenine ordered that King Ferdinand be arrested and brought to Petrograd. *Current History*, 7 (pt. 2):228.
- 15 ROUMANIA — UNITED STATES. Dr. Constantin Angelesco, first Roumanian minister to the United States, presented his credentials to the President. *Official Bulletin*, Jan. 18, 1918.
- 17 BRAZIL — VATICAN. Answer of Brazil to peace note of Pope Benedict made public. Text: *Official Bulletin*, Jan. 17, 1918.
- 17 FINLAND. Switzerland recognized the independence of Finland. *Current History*, 7 (pt. 2):228.
- 18 HUNGARY. Hungarian cabinet resigned on account of lack of support for its military program. *Current History*, 7 (pt. 2):228.
- 19 RUSSIA. Constituent Assembly met at Petrograd and was dissolved Jan. 20 by the Council of National Commissioners. On Jan. 26 the All-Russian Council of Workmen's and Soldiers' Delegates passed a resolution of confidence in the Government of National Commissaries and approved all measures adopted by it. On Jan. 30 the congress adopted the Constitution of the "Russian Soviet Republic." *Current History*, 7 (pt. 2):417.
- 23 BELGIUM — VATICAN. Reply of Belgium to the Peace note of Pope Benedict made public. *Current History*, 7 (pt. 2):418.
- 24 GERMANY — AUSTRIA-HUNGARY. Count von Hertling and Count Czernin replied to the address of President Wilson before Congress Jan. 8, 1918. *Current History*, 7 (pt. 2):394, 418.
- 26 RUSSIA. Third Congress of the Councils of Workmen's and Soldiers' Delegates of All-Russias met at Petrograd, with 635 members. *R. of R.*, 57:248.

January, 1918.

- 28 RUSSIA. Congress of Cossack Socialists met at the military station of Kamesky and passed a resolution declaring war on General Kaledine and assuming all authority. *Current History*, 7 (pt. 2):417.
- 28 NORWAY — UNITED STATES. Announced that an agreement had been reached relative to food shipments to Norway from the United States. Summary: *Official Bulletin*, Jan. 28, 1918.
- 28 FINLAND. Revolution begun in the eastern provinces. *Current History*, 7 (pt. 2):417.
- 28 ROUMANIA — RUSSIA. Bolshevik Government severed diplomatic relations with Roumania. *Current History*, 7 (pt. 2):417.
- 30 ENTENTE ALLIES. Supreme War Council of the Allies convened at Versailles. *Current History*, 7 (pt. 2):418, 455.
- 30 UKRAINE. Kiev, capital of Ukania, fell into Bolshevik control. M. Holubowicz appointed Premier of the Ukraine. *Current History*, 7 (pt. 2):417.
- 30 UNITED STATES — RUSSIA. American ambassador notified the Department of State that he had been threatened by Russian anarchists and warned that he would be held responsible for the lives and liberty of Emma Goldman and Alexander Berkman, who were imprisoned in the United States for conspiracy to obstruct the draft. *Current History*, 7 (pt. 2):417.
- 30 RUSSIA — GREAT BRITAIN. Russian Minister for Foreign Affairs announced that Persia had been informed by Russia that Russia had abrogated the Anglo-Russian agreement of 1904 concerning Persia. Summary of text of notification: *N. Y. Times*, Feb. 1, 1918.
- 30 BRAZIL. Announced that Admiral Pronti had been appointed commander of the Brazilian fleet which will coöperate with the Allied fleets in European waters. *R. of R.*, 57:248.

February, 1918.

- 1 UNITED STATES. New regulations went into effect aimed to prevent goods reaching Germany in neutral bottoms. *Current History*, 7 (pt. 2):415.
- 1 CRIMEAN REPUBLIC. The Tartars held a constituent assembly in the ancient capital of Bakhtchsarai and announced the establishment of an autonomous Crimean Republic. Yalta, in the

February, 1918.

government of Taurida, was occupied by the Tartars on Feb. 4, and an advance made on Sebastopol. *Current History*, 7 (pt. 2):417.

- 1 ARGENTINE REPUBLIC — GERMANY. Argentine naval and military attachés recalled from Berlin. *Current History*, 7 (pt. 2):415.
- 2 UNITED STATES. The President issued an executive order taking over enemy property. *Executive Order No. 2832*.
- 2 RUSSIA. Bolshevik Government announced that British and other foreign embassies would not be allowed to draw on funds deposited in Russian banks until the Bolshevik Government should be allowed complete disposal of Russian funds in the Bank of England. *Current History*, 7 (pt. 2):417.
- 4 RUSSIA. Soviet issued decree separating church and state. *Current History*, 7 (pt. 2):417.
- 7 SPAIN — GERMANY. Spain sent protest to Germany against looting and torpedoing of Spanish steamer *Giralda* on Jan. 28, 1918. *Current History*, 7 (pt. 2):416.
- 8 DEATH OF PROFESSOR LOUIS RENAULT, Member of the *Institut de France*, the *Institut de droit International*, honorary member of the American Society of International Law, and international law adviser to the French Foreign Office.
- 8 TURKEY. The Turkish Foreign Minister, Neesimiy Bey, expressed complete accord with the Czernin and von Hertling replies to President Wilson's address to Congress of Jan. 22, 1918. *Current History*, 7 (pt. 2):418.
- 8 RUSSIA. Official proclamation repudiating national debt; approved by Central Committee. Text: *Current History*, 8 (pt. 1):75.
- 9 UKRAINA — GERMANY, AUSTRIA-HUNGARY, TURKEY AND BULGARIA. Peace treaty signed. Text: *N. Y. Times*, Feb. 12, 1918; *Current History*, 7 (pt. 2):435.
- 10 ROMANIA — GERMANY. Germany issued an ultimatum to Roumania demanding the beginning of peace negotiations within four days. Preliminary treaty of peace signed March 5. Text: *N. Y. Times*, March 7, 1918; *Current History*, 7 (pt. 2):417.
- 11 GERMANY — RUSSIA. Germany announced that Russia had declared state of war at an end with the Teutonic Powers and had demobilized the Russian army. *Current History*, 7 (pt. 2):418.

February, 1918.

- 11 UNITED STATES. President Wilson, in an address to Congress, replied to the speeches of Count von Hertling and Count Czernin of Jan. 24, 1918, relative to terms of peace. Text: *Current History*, 7(pt. 2):400.
- 12 GREAT BRITAIN. Premier Lloyd George replied to the speeches of Count von Hertling and Count Czernin on January 24, 1918, relative to terms of peace. Text: *Current History*, 7 (pt. 2):403.
- 13 COLOMBIA. Presidential election held on this date was indecisive, Dr. Marco Suarez apparently leading. A second election will be held on June 3. *R. of R.*, 57:251.
- 14 DEATH OF SIR CECIL SPRING-RICE, former ambassador from England to the United States.
- 14 UNITED STATES. Proclamation issued for the control of the entire foreign commerce of the United States. *Official Bulletin*, Feb. 15, 1918.
- 16 ROUMANIA. New Roumanian cabinet formed. Personnel: *Official Bulletin*, Feb. 16, 1918.
- 27 RUSSIA—UNITED STATES. American embassy staff, consulate, military mission and Red Cross left Petrograd for Vologda. *Official Bulletin*, March 1, 1918.

March, 1918.

- 1 RUSSIA—FINLAND. Independence of Finland acknowledged and treaty of peace signed. *N. Y. Times*, March 6, 1918.
- 1 ALAND ISLANDS. Announced that through the mediation of the Swedish naval expedition, an agreement had been reached by which Russian and Finnish troops were to be withdrawn, the Islands left in charge of a small Swedish force, and the International question concerning the islands left to future agreement between the Swedish and Finnish Governments. On March 3 Germany notified Sweden that, at the request of Finland, military assistance was to be rendered Finland in quelling the rebellion in the eastern provinces and that it was the intention of Germany to use the Aland Islands as a base of operations. Sweden protested against the German occupation. *London Times*, March 2, 1918.
- 3 RUSSIA—GERMANY. Peace treaty signed. Text: *Current History*, 8 (pt. 1):54.

March, 1918.

- 4 NORWAY — GREAT BRITAIN. Norway protested against seizure of German steamer *Dusseldorf* by the British in Norwegian waters. *N. Y. Times*, March 5, 1918.
- 5 ROUMANIA — GERMANY. Austria-Hungary, Bulgaria and Turkey. Peace treaty signed. Text of preliminary treaty: *N. Y. Times*, March 7, 8, 1918; *Current History* 8 (pt. 1): 57.
- 7 FINLAND — GERMANY. Peace treaty signed. Summary of text: *N. Y. Times*, March 9, 1918.
- 9 SPAIN. Resignation of Alhuceres cabinet accepted. *N. Y. Times*, March 11, 1918.
- 11 UNITED STATES — RUSSIA. President of the United States sent message to the All-Russian Congress of Soviets. Text: *Official Bulletin*, March 12, 1918.
- 11 RUSSIA. Foreign Minister Trotsky resigned. *N. Y. Times*, March 12, 1918.
- 12 RUSSIA. All-Russian Congress of Soviets met in Moscow. *Official Bulletin*, March 12, 1918.
- 13 RUSSIA. Members of the crew of the Russian steamer *Omsk* removed from the ship by the Collector of Customs at Norfolk at the request of the captain. *N. Y. Times*, March 14, 1918.
- 14 RUSSIA — GERMANY, AUSTRIA-HUNGARY, BULGARIA AND TURKEY. All-Russian Congress of Soviets ratified peace treaty with the Central Powers. *N. Y. Times*, March 16, 1918.
- 18 GERMANY — UNITED STATES. Announced that Germany would seize American property in Germany. *N. Y. Times*, March 19, 1918.
- 18 ENTENTE ALLIES. Denounce Russian treaties. Text: *Current History*, 8 (pt. 1): 56.
- 20 ROUMANIA. Alexander Marghiloman, appointed premier. *N. Y. Times*, March 21, 1918.
- 20 UNITED STATES — NETHERLANDS. President issued a proclamation commandeering Dutch ships in American territorial waters, under the Act of Congress of June 15, 1917. *Official Bulletin*, March 21, 1918.
- 21 GERMANY — ROUMANIA. Armistice with Roumania extended till midnight, March 22, 1918. *N. Y. Times*, March 21, 1918.
- 21 GERMANY. Prince Lichnowsky, former German ambassador to England, resigned his offices and honors owing to the publica-

March, 1918.

tion of a memorandum by him stating his views on the entry of Germany into the war. *N. Y. Times*, March 18, 21, 24, April 21, 1918, *London Times*, March 18-24, April 4; this JOURNAL, 386. Reply by Von Jagow, *N. Y. Times*, April 28, 1918.

- 27 RUSSIA — GREAT BRITAIN. Great Britain announced that after April 1 no further interest on Russian bonds would be paid. *N. Y. Times*, March 29, 1918.

KATHRYN SELLERS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL LAW

GREAT BRITAIN¹

Exportation of certain articles to Sweden, Norway, Denmark, and the Netherlands prohibited. Proclamation, Sept. 29, 1917. (St. R. & O. 1917, No. 1007.) 1½d.

Geneva Convention Act, 1911. Orders in Council, Oct. 23, 1917. Colonies (St. R. & O. 1917, No. 1142); British protectorates (St. R. & O. 1917, No. 1143). 1½d. each.

Hospital ships, British, Alleged misuse of. Correspondence with the German Government regarding the. (Miscellaneous No. 16, 1917.) (Cd. 8692.) 4d.

Military service of British subjects in France and French citizens in Great Britain, Agreement respecting, signed at Paris, Oct. 4, 1917. (Miscellaneous No. 15, 1917.) 1½d.

Trading with the enemy. Consolidated statutory list of persons and firms in countries, other than enemy countries, with whom persons and firms in the United Kingdom are prohibited from trading. With notes to British merchants engaged in foreign trade. Complete to Oct. 12, 1917. Prefaced by the proclamation, May 23, 1916, prohibiting trading with certain persons, or bodies of persons, of enemy nationality or enemy association. (No. 37a.) 7d.

Transit traffic across Holland of materials susceptible of employment as military supplies. Correspondence respecting the. (Miscellaneous No. 17, 1917.) (Cd. 8693.) 2½d.

UNITED STATES²

Alien enemies. Additional regulations prescribing conduct of. Proclamation No. 1408, November 16, 1917: *State Dept.*

———. Instructions to persons owning or operating water-front shipping facilities relative to enforcement of President's proclamation of April 6, 1917. 3 pp. *Justice Dept.*

¹ Official publications of Great Britain may be purchased of Wyman & Sons, Fetter Lane, E. C., London, England.

² When prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Alien enemies. Registration of German alien enemies, general rules and regulations prescribed by Attorney General under authority of proclamation dated Nov. 16, 1917. 58 pp. *Justice Dept.*

Alien Property Custodian. Executive Order fixing salary of, and vesting certain power and authority in. Oct. 29, 1917. 1 p. (No. 2744.) *State Dept.*

———. Report of, of all proceedings had under act to define, regulate, and punish trading with the enemy, approved Oct. 6, 1917, Jan. 18, 1918. 10 pp. (H. doc. 840.) *Alien Property Custodian.*

American National Red Cross. Regulations governing employment of, in time of war. 1917. 18 pp. (Special Regulations 61.) *War Dept.*

Austria. Existence of war between United States and. Proclamation No. 1417, Dec. 11, 1917. *State Dept.*

———. Joint resolution declaring that state of war exists between Imperial and Royal Austro-Hungarian Government and Government and people of United States, and making provision to prosecute the same. Approved Dec. 7, 1917. 1 p. (Public resolution 17.) *State Dept.*

———. Report to accompany above resolution. Dec. 6, 1917. 6 pp. (H. rp. 203.) *Foreign Affairs Committee.*

———. Report to accompany above resolution. Dec. 7, 1917. 1 p. (S. rp. 178.) *Foreign Relations Committee.*

China. Agreement effected by exchange of notes between United States and Japan respecting their mutual interest in. Signed Nov. 2, 1917. 4 pp. (Treaty Series 630.) *State Dept.*

———. Statement made by Secretary of State on exchange of notes between United States and Japan dealing with policy of United States and Japan in regard to China. 3 pp. 1917. *State Dept.*

Chinese in United States. Treaty, laws, and rules governing admission of Chinese. Rules of May 1, 1917. 2d ed. 62 pp. Paper, 5c.

Citizenship. Hearings on H. R. 4049 relative to citizenship of American women married to foreigners. 1918. 53 pp.

Diplomatic and consular service. Hearings on appropriation bill for fiscal year 1919. Jan. 8-21, 1918. 3 pts., 110 pp. *Foreign Affairs Committee.*

———. Report to accompany bill. Jan. 28, 1918. 18 pp. (H. rp. 271.) *Foreign Affairs Committee.*

———. Information regarding appointments and promotions in. 1917. 19 pp. *State Dept.*

Exclusion of subjects of Austria-Hungary and Germany from alien enemy act. Report to accompany H. R. 9159, to authorize President to exclude certain subjects of Austria-Hungary and Germany from classification of alien enemies and to naturalize certain members of Army, Navy, and Marine Corps. Jan. 23, 1918. 4 pp. (H. rp. 252.) *Foreign Affairs Committee.*

German vessels. Executive Order authorizing taking over for service in Navy of the *Pollux*, now at New York. Nov. 2, 1917. 1 p. (No. 2748.) *State Dept.*

German war practices. Pt. 1, Treatment of civilians. Ed. by Dana C. Munro, George C. Sellery, and August C. Krey. Nov. 15, 1917. 94 pp. *Public Information Committee.*

Greece. Indemnities to Government of, for injuries inflicted on Greeks during riots in South Omaha, Neb., Feb. 21, 1909. Report to accompany H. R. 69. Jan. 7, 1918. 3 pp. (H. rp. 232.) *Foreign Affairs Committee.*

Immigration, Annual report of the Commissioner General of. 1917. xxxii, 231 pp. 2 pl. Paper, 20c.

Japanese War Mission to the United States. Addresses delivered at Mount Vernon, Aug. 26, 1917, by Secretary Daniels and Viscount Ishii. 1917. 4 pp. (S. doc. 85.) *Senate.*

Law and legal literature of Argentina, Brazil, and Chile, Guide to. By Edwin M. Borchard. 1917. 523 pp. Cloth, \$1.00.

Maritime Canal Company of Nicaragua, Report of. Dec. 4, 1917. 2 pp. (H. doc. 528.) *Interior Dept.*

Migratory birds, protection of. Report to accompany bill to give effect to convention between United States and Great Britain, concluded Aug. 16, 1913. Jan. 17, 1918. 5 pp. (H. rp. 243.) *Foreign Affairs Committee.*

Naturalization, Annual report of Commissioner of. 1917. 79 pp. *Naturalization Bureau.*

Panama Canal. Executive Order correcting Executive Order No. 2692, Aug. 27, 1917, establishing defensive areas. Oct. 24, 1917. 1 p. (2737.) *State Dept.*

———. Publications for sale by Superintendent of Documents relating to Canal Zone, Republic of Panama, Colombia Treaty, Suez Canal, and Nicaragua Route. November, 1917. 14 pp. (Price list 61, 4th ed.)

Panama canal. Treaties and Acts of Congress relating to. 1917. 180 + xxxviii pp. Paper, 15c.

Peace negotiations, German. Address delivered by President of United States at joint session of two Houses of Congress, Jan. 8, 1918. 8 pp. Paper, 5c.

Prisoners of war, Custody of. Corrected to Oct. 15, 1917. 11 pp. (Special regulations 62.) *War Dept.*

Submarine warfare. Instructions which must be followed by licensed officers of all United States merchant vessels traversing submarine zone. 1917. 8 + 13 pp. *Shipping Board.*

Trading with the enemy. Enemy trading list No. 1. Oct. 6, 1917. 28 pp. *War Trade Board.*

———. Hearings before subcommittee on bill to define, regulate, and punish trading with the enemy. July 23–Aug. 13, 1917. 2 pts. 236 pp. *Commerce Committee.*

United States Court for China. Statement of Judge Charles S. Lobingier at hearings on H. R. 4281, Sept. 27–Oct. 1, 1917.

Vessels in ports of United States. Proclamation No. 1413, Dec. 3, 1917. *State Dept.*

Visiting War Missions to the United States. Proceedings in Senate and House of Representatives on occasion of receptions tendered to war missions of France, Great Britain, Italy, Russia, Belgium, and Japan. 1917. 102 pp. (S. doc. 87.) Paper, 10c.

War. Address delivered by the President at joint session of the two Houses of Congress, Dec. 4, 1917, relating to position of United States. 12 pp. Paper, 5c.

War Cyclopedia. Handbook for ready reference on the Great War. Edited by Frederic L. Paxson, Edward S. Corwin, and Samuel B. Harding. 1st ed. Jan., 1918. 321 pp., map. Paper, 25c.

War legislation of 65th Congress, 1st session, Summary of. By Charles Merz. Oct., 1917. (War Information Series 10.) *Public Information Committee.*

War of Self-Defense. By Robert Lansing and Louis F. Post. Aug., 1917. 22 pp. il. (War Information Series 5.) *Public Information Committee.*

War Trade Board. Rules and regulations of. Official information for shippers, exporters, importers, and commercial trade organizations. Nov., 1917. 69 pp. (No. 1.) *War Trade Board, Information Division.*

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

RICAUD ET AL. v. THE AMERICAN METAL CO., LTD.

Supreme Court of the United States

March 11, 1918

Mr. Justice CLARKE delivered the opinion of the court.

In this suit in equity, commenced in the United States District Court for the Western District of Texas, the plaintiff in that court claims to be the owner of and entitled to a large consignment of lead bullion held in bond by the Collector of Customs at El Paso, Texas. An injunction was granted restraining the Collector until further order from delivering the bullion to either of the other defendants.

Barlow, one of the defendants in the District Court, claims to be the owner of the property by purchase from the defendant Ricaud, who it is claimed purchased it from General Pereyra, who in the year 1913 was the commander of a brigade of the Constitutionalist Army of Mexico of which Venustiano Carranza was then First Chief.

It is not seriously disputed that General Pereyra, in his capacity as a commanding officer, in September, 1913, demanded this bullion from the Penoles Mining Company, a Mexican corporation doing business at Bermejillo, Mexico; that when it was delivered to him he gave a receipt which contains a promise to pay for it "on the triumph of the revolution or the establishment of a legal government"; that Pereyra sold the bullion to defendant Ricaud, who sold it to the defendant Barlow; that the proceeds of the sale were devoted to the purchase of arms, ammunition, food and clothing for Pereyra's troops, and that Pereyra in the transaction represented and acted for the Government of General Carranza, which has since been recognized by the United States Government as the *de jure* Government of Mexico.

The plaintiff, appellee here, claims to have purchased the bullion from the Penoles Mining Company in June, 1913.

The District Court rendered a decree in favor of the plaintiff from

which defendants appealed to the Circuit Court of Appeals for the Fifth Circuit, and that court certifies three questions as to which it desires the instruction of this court.

The sufficiency of the certificate of the Circuit Court of Appeals is challenged at the threshold.

There is no denying that there is much of merit in the objection to the form of this certificate, including the form of the questions, for the reason that the certificate, instead of containing a "proper statement of the facts on which the questions and propositions of law arise," as is required by Rule 37 of this court, contains a statement of what is "alleged and denied" by the parties plaintiff and defendant in their pleadings, with the additional statement that there was evidence "tending to establish the facts as claimed by each party," but without any finding whatever as to what the evidence showed the facts to be, and the first question, on which the other two depend, is in terms based entirely on an "assumed" statement of facts.

If this certificate had not been supplemented by the recognition by the United States Government of the Government of Carranza, first as the *de facto*, and later as the *de jure* Government of Mexico, of which facts this court will take judicial notice (*Jones v. United States*, 137 U. S. 202; *Underhill v. Hernandez*, 168 U. S. 250), it would be our duty to declare the certificate insufficient and to return it to the Circuit Court of Appeals without answering the questions. *Cinn., Ham. & Dayton Rd. Co. v. McKeen*, 149 U. S. 259; *Graver v. Faurot*, 162 U. S. 435; *Cross v. Evans*, 167 U. S. 60; *Stratton's Independence v. Howbert*, 231 U. S. 399, 422.

But this recognition of the government under which General Pereyra was acting, as the legitimate Government of Mexico, makes the answers to the questions so certain and its effect upon the case is so clear, that, for the purpose of making an end of the litigation, we will proceed to answer the questions.

The first question is:

I. "Assuming that the bullion in suit was seized, condemned, and sold for war supplies by the Constitutionalist forces in revolution in Mexico, acting under authority from General Carranza, claiming to be the Provisional President of the Republic of Mexico, had the District Court of the Western District of Texas, into which the said bullion had been imported from Mexico, jurisdiction to try and adjudge as to the validity of the title acquired by and through the said seizure, appropriation and sale by the Carranza forces as against an American citizen claiming ownership of said bullion prior to its seizure?"

There can be no doubt that the required diversity of citizenship to give the District Court jurisdiction of the case was stated in the petition for injunction. The certificate shows that it was alleged in the petition that the bullion was the property of the plaintiff and that it had been forcibly taken from its possession in Mexico by unknown persons but without any reference being made to a state of war prevailing therein at the time; that it was consigned to defendant Barlow at El Paso, Texas, and was in a bonded warehouse in the possession of the defendant Cobb, as Collector of Customs, who, unless restrained by the court, would deliver it to the other defendants.

This form of petition brought the case within the jurisdiction of the District Court (*United States v. Arredondo et al.*, 6 Pet. 691, 709; *Gregon's Lessee v. Astor et al.*, 2 How. 319; *Minnesota Co. v. St. Paul Co.*, 2 Wall. 609, 632), and the question is, whether the circumstance that the bullion was seized, condemned and sold under the conditions stated in the question, deprived the court of jurisdiction to go forward and adjudge as to the validity of the title acquired by the seizure and sale by the Carranza forces.

The answer which should be given to this question has been rendered not doubtful by the fact that, as we have said, the revolution inaugurated by General Carranza against General Huerta proved successful and the government established by him has been recognized by the political department of our government as the *de facto* and later as the *de jure* Government of Mexico, which decision binds the judges as well as all other officers and citizens of the government. *United States v. Palmer*, 3 Wheat. 160; *In re Cooper*, 143 U. S. 472; *Jones v. United States*, 137 U. S. 202. This recognition is retroactive in effect and validates all the actions of the Carranza Government from the commencement of its existence (*Williams v. Bruffy*, 96 U. S. 176, 186; *Underhill v. Hernandez*, 168 U. S. 250, 253) and the action of General Pereyra complained of must therefore be regarded as the action, in time of civil war, of a duly commissioned general of the legitimate Government of Mexico.

It is settled that the courts will take judicial notice of such recognition, as we have here, of the Carranza Government by the political department of our government (*Jones v. United States*, 137 U. S. 202), and that the courts of one independent government will not sit in judgment on the validity of the acts of another done within its own territory (*Underhill v. Hernandez*, 168 U. S. 250, 253; *Ameri-*

can *Banana Company v. United Fruit Company*, 213 U. S. 347; *Oetjen v. Central Leather Co.*, — U. S. — ¹). This last rule, however, does not deprive the courts of jurisdiction once acquired over a case. It requires only that when it is made to appear that the foreign government has acted in a given way on the subject matter of the litigation, the details of such action or the merit of the result can not be questioned but must be accepted by our courts as a rule for their decision. To accept a ruling authority and to decide accordingly is not a surrender or abandonment of jurisdiction but is an exercise of it. It results that the title to the property in this case must be determined by the result of the action taken by the military authorities of Mexico and that, giving effect to this rule is an exercise of jurisdiction which requires that the first question be answered in the affirmative.

The second question reads:

"If the first question is answered in the affirmative, does the subsequent recognition by the United States Government of Carranza as the legitimate President of the Republic of Mexico and his government as the only legitimate government of the Republic of Mexico deprive this court of jurisdiction on this appeal to decide and adjudge the case on its merits?"

Our answer to the first requires a negative answer to this second question.

The third question reads:

"If question two is answered in the negative, did the seizure, condemnation, and sale of the bullion in the manner and for the purposes stated to be assumed in question one have the effect of divesting the title to or ownership of it of a certain citizen of the United States of America not in or a resident of Mexico when such seizure and condemnation occurred?"

The answer to this question must be in the affirmative for the reasons given and upon the authorities cited in the opinion recently announced in cases Nos. 268 and 269, *Oetjen v. Central Leather Company*. The fact that the title to the property in controversy may have been in an American citizen who was not in or a resident of Mexico at the time it was seized for military purposes by the legitimate Government of Mexico, does not affect the rule of law that the act within its own boundaries of one sovereign state can not become the subject of reëxamination and modification in the courts of another. Such action when shown to have been taken, becomes, as we have said,

¹ *Infra*, p. 421.

a rule of decision for the courts of this country. Whatever rights such an American citizen may have can be asserted only through the courts of Mexico or through the political departments of our Government. The first and third questions will be answered in the affirmative and the second in the negative.

And it is so ordered.

OETJEN v. CENTRAL LEATHER CO.

Supreme Court of the United States

March 11, 1918

Mr. Justice CLARKE delivered the opinion of the court.

These two cases involving the same question, were argued and will be decided together. They are suits in replevin and involve the title to two large consignment of hides, which the plaintiff in error claims to own as assignee of Martinez & Company, a partnership engaged in business in the city of Torreon, Mexico, but which the defendant in error claims to own by purchase from the Finnegan-Brown Company, a Texas corporation, which it is alleged purchased the hides in Mexico from General Francisco Villa, on January 3, 1914.

The cases were commenced in a Circuit Court of New Jersey, in which judgments were rendered for the defendants, which were affirmed by the Court of Errors and Appeals, and they are brought to this court on the theory, that the claim of title to the hides by the defendant in error is invalid because based upon a purchase from General Villa, who, it is urged, confiscated them contrary to the provisions of the Hague Convention of 1907 respecting the laws and customs of war on land; that the judgment of the State court denied to the plaintiff in error this right which he "set up and claimed" under the Hague Convention or treaty; and that this denial gives him the right of review in this court.

A somewhat detailed description will be necessary of the political conditions in Mexico prior to and at the time of the seizure of the property in controversy by the military authorities. It appears in the record, and is a matter of general history, that on February 23, 1913, Madero, President of the Republic of Mexico, was assassinated; that immediately thereafter General Huerta declared himself Provisional President of the Republic and took the oath of office as such; that on the twenty-sixth day of March following General Carranza,

who was then Governor of the State of Coahuila, inaugurated a revolution against the claimed authority of Huerta and in a "Manifesto addressed to the Mexican Nation" proclaimed the organization of a constitutional government under "The Plan of Guadalupe," and that civil war was at once entered upon between the followers and forces of the two leaders. When General Carranza assumed the leadership of what were called the Constitutionalist forces he commissioned General Villa his representative, as "Commander of the North," and assigned him to an independent command in that part of the country. Such progress was made by the Carranza forces that in the autumn of 1913 they were in military possession, as the record shows, of approximately two-thirds of the area of the entire country, with the exception of a few scattered towns and cities, and after a battle lasting several days the City of Torreon in the State of Coahuila was captured by General Villa on October 1 of that year. Immediately after the capture of Torreon, Villa proposed levying a military contribution on the inhabitants, for the support of his army, and thereupon influential citizens, preferring to provide the required money by an assessment upon the community, to having their property forcibly seized, called together a largely attended meeting and after negotiations with General Villa as to the amount to be paid, an assessment was made on the men of property of the city, which was in large part promptly paid. Martinez, the owner from whom the plaintiff in error claims title to the property involved in this case, was a wealthy resident of Torreon and was a dealer in hides in a large way. Being an adherent of Huerta, when Torreon was captured Martinez fled the city and failed to pay the assessment imposed upon him, and it was to satisfy this assessment that, by order of General Villa, the hides in controversy were seized and on January 3, 1914, were sold in Mexico to the Finnegan-Brown Company. They were paid for in Mexico, and were thereafter shipped into the United States and were replevied, as stated.

This court will take judicial notice of the fact that since the transactions thus detailed and since the trial of this case in the lower courts, the Government of the United States recognized the Government of Carranza as the *de facto* government of the Republic of Mexico, on October 19, 1915, and as the *de jure* government on August 31, 1917. *Jones v. United States*, 137 U. S. 202; *Underhill v. Hernandez*, 168 U. S. 250.

On this state of fact the plaintiff in error argues that the "Regulations" annexed to the Hague Convention of 1907 "Respecting Laws and Customs of War on Land" constitute a treaty between the United States and Mexico; that these "Regulations" forbid such seizure and sale of property as we are considering in this case; and that, therefore, somewhat vaguely, no title passed by the sale made by General Villa and the property may be recovered by the Mexican owner or his assignees when found in this country.

It would, perhaps, be sufficient answer to this contention to say that the Hague Conventions are international in character, designed and adapted to regulate international warfare, and that they do not, in terms or in purpose, apply to a civil war. Were it otherwise, however, it might be effectively argued that the declaration relied upon that "private property can not be confiscated" contained in Article 43 of the Regulations does not have the scope claimed for it, since Article 49 provides that "money contributions" . . . "for the needs of the Army" may be levied upon occupied territory, and Article 52 provides that "Requisitions in kind and services may be demanded for the needs of the army of occupation," and that contributions in kind shall, as far as possible, be paid for in cash, and when not so paid for a receipt shall be given and payment of the amount due shall be made as soon as possible. And also for the reason that the "Convention" to which the "Regulations" are annexed, recognizing the incomplete character of the results arrived at, expressly provides that until a more complete code is agreed upon, cases not provided for in the "Regulations" shall be governed by the principles of the law of nations.

But, since claims similar to the one before us are being made in many cases in this and in other courts, we prefer to place our decision upon the application of three clearly settled principles of law to the facts of this case as we have stated them.

The conduct of the foreign relations of our government is committed by the Constitution to the Executive and Legislative — "the political" — Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision. *United States v. Palmer*, 3 Wheat. 610; *Foster v. Neilson*, 2 Pet. 253, 307, 309; *Garcia v. Lee*, 12 Pet. 511, 517, 520; *Williams v. Suffolk Ins. Co.*, 13 Pet. 415, 420; *In re Cooper*, 143 U. S. 472, 499. It has been specifically decided that

"Who is the sovereign *de jure* or *de facto* of a territory is not a judicial but is a political question," the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens and subjects of that government. This principle has always been upheld by this Court, and has been affirmed under a great variety of circumstances." *Jones v. United States*, 137 U. S. 202, 212.

It is also the result of the interpretation by this court of the principles of international law that when a government which originates in revolution or revolt is recognized by the political department of our government as the *de jure* government of the country in which it is established, such recognition is retroactive in effect and validates all the actions and conduct of the government so recognized from the commencement of its existence. *Williams v. Bruffy*, 96 U. S. 176, 186; *Underhill v. Hernandez*, 168 U. S. 250, 253. See S. C., 65 Fed. Rep. 577.

To these principles we must add that: "Every sovereign state is bound to respect the independence of every other sovereign state and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves." *Underhill v. Hernandez*, 168 U. S. 250, 253; *American Banana Co. v. United Fruit Co.*, 213 U. S. 347.

Applying these principles of law to the case at bar, we have a duly commissioned military commander of what must be accepted as the legitimate government of Mexico, in the progress of a revolution, and when conducting active independent operations, seizing and selling in Mexico, as a military contribution, the property in controversy, at the time owned and in the possession of a citizen of Mexico, the assignor of the plaintiff in error. Plainly this was the action, in Mexico, of the legitimate Mexican Government when dealing with a Mexican citizen, and, as we have seen, for the soundest reasons, and upon repeated decisions of this court such action is not subject to reexamination and modification by the courts of this country.

The principle that the conduct of one independent government can not be successfully questioned in the courts of another is as applicable to a case involving the title to property brought within the custody of a court, such as we have here, as it was held to be to the cases

cited, in which claims for damages were based upon acts done in a foreign country, for it rests at last upon the highest considerations of international comity and expediency. To permit the validity of the acts of one sovereign state to be reëxamined and perhaps condemned by the courts of another would very certainly "imperil the amicable relations between governments and vex the peace of nations."

It is not necessary to consider, as the New Jersey court did, the validity of the levy of the contribution made by the Mexican commanding general, under rules of international law applicable to the situation, since the subject is not open to reëxamination by this or any other American court.

The remedy of the former owner, or of the purchaser from him, of the property in controversy, if either has any remedy, must be found in the courts of Mexico or through the diplomatic agencies of the political department of our government. The judgments of the Court of Errors and Appeals of New Jersey must be

Affirmed.

BOOK REVIEWS

The Law of the Sea. By G. W. T. Omond. New York: The Macmillan Company. 1916. pp. 80. \$1.00.

This small volume is a historical sketch of the progress by rule and practice in some of the usages and laws of war upon the seas from 1756 and the times of the first Armed Neutrality until the earlier years of the present war. The language of the book is nontechnical, and in the main the work can be considered as being historically correct. It is not, however, colorless in its findings, as the writer evidently belongs to the school of Bowles and considers the adoption by England of the Declaration of Paris a blunder and a surrender of the right exercised with great effect by the British Navy in the Napoleonic Wars as well as during the period preceding that era.

The author, in his interesting narrative, shows himself, as an Englishman, to be in opposition to an extension of the rights and privileges of neutrals, especially as to exemptions granted by the Declaration of Paris to enemy goods under neutral flags.

The great extension of the doctrine of contrabrand and in the enumeration of articles of that nature made in recent years lessens, of course, the value of such exemption when under a neutral flag, and when to this is added the drastic restrictions of trade with an enemy, the consequent value of the Declaration of Paris to neutrals is materially lessened, as well as to the trade of the weaker naval belligerent.

The Declaration of Paris was the result of the Crimean War, the outbreak of which found the principal western allies, Great Britain and France, with different principles and practice as to laws of capture at sea. Great Britain practiced the traditional rule found in the *Consolato del Mare*, which made enemy ships or cargoes subject to capture, while neutral ships and cargoes were free. France, on the other hand, followed a different doctrine by which neutral cargoes on board of enemy ships, in addition to enemy cargoes on board of neutral ships, were subject to capture.

The allied Powers, however, in their war against Russia, agreed to carry on the war by making enemy cargo free in neutral ships, as well as neutral goods on the ships of the enemy. This agreement naturally resulted at the end of the war in the Declaration of Paris.

The great sea power of the Powers allied against Russia, in view of the great possibilities shown in our own Civil War and in the present great war, was almost literally squandered in the Baltic. As the author of the book under review says,

So much consideration was shown to the neutrals that on all hands they engaged in trade for the benefit of Russia. . . . Prussian and Greek merchants did a roaring trade by exporting raw materials from Russia in exchange for supplies which they needed; and the Government (of England) was accused with good reason of prolonging the war by the immunity granted to the neutral merchantmen.

Military preponderance on land naturally chafes at sea restriction and sea power, and hence there is raised a false cry of "freedom of the seas" without an offer of a diminution of military power on land in return.

This check (sea power) to military domination has upon the whole tended toward a freer world and a saner democracy. It would be a sad day for us all if unchecked military power on land could have a similar license on the high seas.

C. H. STOCKTON.

The Philippines. By Charles Burke Elliott. 2 vols. Indianapolis: Bobbs, Merrill Company. 1917. pp. 541, 541. \$9 net.

After the smoke from the guns of the American fleet at Manila had vanished, revealing the deadly blow dealt to the Spanish flotilla, the last page of the closing chapter of the history of the Spanish rule in the Philippine Islands was written, and with the dawn of the new day a new era began in the history of the United States and of the Islands of the Far East. And so the world assumed it. Columbia, to quote the words of the author, "was then full grown, and Dewey's battle in Manila Bay was regarded as a sort of a national coming-out party. Henceforth she was to be considered in society." In coming out, however, Columbia did not adopt the usual attitude of the blushing and timid debutante, but rather that of the fully developed matron, ready to bear a self-imposed burden and to take up the responsibility of a national policy from which a majority of the thoughtful men of

the country instinctively shrank because it seemed so remote from anything in her past history: the policy of expansion. But those who thought so failed to observe that "virile nations are and have always been colonizing nations." As said by the writer of an interesting article in the *Spectator* (Jan. 14, 1899), "The great races, when the hour of opportunity arrives, expand greatly — that is all we really know; and what, when the momentum is on them, they have to care about is to see that their actions, for which they are only half responsible, benefit the world." President McKinley, than whom no American statesman had a keener sense for detecting the currents and drifts of public opinion, after availing himself of every means of information, reached the conclusion that a large majority of the people favored retaining the Philippines, and so, to the suggestion that, after reserving suitable naval stations, the Islands should be left in possession of Spain, he replied that the American people who had gone to war for the emancipation of Cuba would not, after Dewey's victory in Manila, consent to leave the Filipinos any longer under the dominion of Spain, and that if Spain were driven out and American sovereignty not set up, the peace of the world would be endangered.

For a comparatively short time the question whether it was wise or unwise for the United States to take title to the Philippine Islands and assume the burden of government there was made the subject of serious debates in the press, in Congress, and between private individuals and organizations, and even went so far as being made a party issue in the presidential elections of 1900. But this question, as suggested by the Hon. Elihu Root in the prefatory note, no longer calls for consideration. The United States took the Philippines, acquired the rights, and took the duties of sovereignty. "Self-respect requires that we should discharge the obligations we have assumed." And these obligations are the resultant of the policy this country has adopted in the management of the Philippines. From the time the United States took possession of the Islands of the Far East, she accepted as an axiomatic principle that the good of the native people is the primary object of the metropolitan state. "Her policy is distinctive in that it places stress upon the political as well as the economic development of the natives and on education as the primary means by which such development is to be effected." And, going farther than the heretofore most liberal colonizing nations, clearly announced that complete self-government and ultimately an independent state

was to be not only the incidental and possible result of her policy, but the direct object of its activities, and that the Philippines would be managed solely in the interest of the natives with the deliberate purpose of preparing them for the management of their own affairs. This was a departure in the history and methods of colonization, to the great astonishment of even Great Britain, whose principles and practices may be said to have been the pattern upon which America devised her policy in the Philippines.

Time has shown the wisdom of her policy. No British, Dutch, German, or French colony has made more progress materially than have the Philippines during the last fifteen years, or enjoyed a higher degree of order and justice during the past decade. "It has been said that the Englishman's sense of justice and the Frenchman's sense of humor are their chief assets as successful colonizers and rulers of alien people, and that the German, possessing neither of these invaluable attributes, is heavily handicapped. Americans possess the sense of justice and of humor and possibly something more." And this something more is what has made America accomplish what neither country has:

America has controlled the Philippines for seventeen years, nearly a third of which were years of war and organization. In that short time she has demonstrated not only that her people possess the Englishman's capacity for governing dependencies, but that they have a certain quality of enthusiasm for high ideals which British colonial history has not always disclosed and to the lack of which friendly foreign critics attribute her present difficulties in India and Egypt. Law, order, and justice prevail in the Philippines as in all the British colonies. The Filipinos have their national aspirations, their agitators, sedition mongers, irresponsible *politicos* and objectionable newspapers. They are as eager for self-government as the Indians and the Egyptians, but it is a noticeable fact that these conquered, irritable, and excitable people have not thrown a bomb or attempted to murder an American official. America's policy has not been repressive; it has not presented a stone wall of opposition to native aspirations, and it gives every indication of being successful.

In fact, it has been successful; and before the year 1916 was very much advanced the Filipinos found that America had fulfilled the promises which from the beginning had been made to them. With the passage of the Jones Bill in the summer of 1916 an autonomous government has been established in the Philippines. America, who by the lips of ex-President Taft, the first Civil Governor sent there, fostered a national feeling and awakened in the Filipinos the true

sense of patriotism by the maxim of "*Filipinas para los Filipinos*" (The Philippines for the Filipinos), sees with pride today that her efforts have been rewarded with the most crowning success, and the people she undertook to educate and prepare to take a direct part in the concert of nations have responded so well that her work from now on will be only that of a guide, more than that of an instructor. After the passage of the Jones Bill, all feelings of distrust which might have existed have disappeared from the heart of the Filipinos, and today the ties are closer between this country and the Islands.

It is because of this fact that the publication by Mr. Charles B. Elliott of his work on the Philippines is peculiarly valuable. It is to be regretted that such a work should not have come out sooner, or that Judge Elliott should not have started earlier, at least the first volume, in which the author, in the comparatively brief space of 527 pages, covers the history of the Philippines from the time of their discovery in 1520 until the end of the military régime and the turning over of the government of the Islands to the Philippine Commission appointed by President McKinley. Its early publication would have better acquainted the people of this country with conditions in the Philippine Islands and awakened more general interest in them than has been taken heretofore. This does not mean, however, that Judge Elliott's work is not immensely valuable at present, when the fulfillment of America's promises to the Filipinos have brought closer ties between the two countries.

The first volume of Mr. Elliott's work on *The Philippines* contains eighteen chapters, of which the first, on "The Theory and Practice of Colonization," is introductory; but the comparative study he makes of all the systems of colonization and their respective results from the time of the Phoenicians, Greeks and Romans, up to the present, constitutes an important monograph, the separate publication of which would have made of itself an interesting addition to any library. The next three chapters, "The Philippine Archipelago," "The Native Peoples," and "The Moros" are expository of the land and of the character of its inhabitants. As regards the latter, the author does well to say that few of the works which have been written have been carefully and conscientiously prepared, but the greater number "are apparently the work of the impressionist or cubic schools"; and "some of the books are not entirely honest. The Filipinos painted by these writers are not recognized by Americans or Europeans who have dealt

with and worked among the real people." The general outline which the author makes is remarkably accurate, taking into consideration, however, that "in speaking of the characteristics and habits of the Filipinos, the reader must constantly bear in mind that no characterization applies to all individuals or even to all classes."

The historical work begins with Chapter V and covers Parts II, III, and IV. "The Discovery and Conquest," "Two and One-half Centuries of Stagnation" in the system of government, "The Awakening and Revolt," the exposition of the Spanish colonial system with "The Governmental Organization," "The Legislation, Codes and Courts," "Taxation and Revenue," and "Personal Status" and "Trade Restrictions," are subjects which are masterly treated and in which the author is fully documented. Every milestone in the history of the Spanish régime has been carefully marked out. It shows with impartiality the good and bad points of that system and proves that its failure was not due to intrinsic defects, but to the jealousy which naturally existed between two Powers each of whom considered itself supreme and with equal right to be at the steering wheel of the governmental ship, and prone, therefore, to hinder each other at every important step: the civil and the ecclesiastical.

The history of the American rule in the Philippines covers the second half of the first volume and the whole of the second; beginning with "The Capture of Manila" and ending with the passage of the Jones Bill and the organization of the Philippine Legislature, composed of a House of Representatives and a Senate, both elective and composed exclusively of natives, and of a Cabinet formed by the heads of the several departments of the government, who are also Filipinos in their majority. "The Capture of Manila," "The Treaty of Paris," "The Military Occupation," and "The Filipino Rebellion" are four very interesting chapters, in which the respective subjects are treated with so much detail and the incidents told in such a vivid and pleasant strain of language that their reading is as fascinating as a fiction book.

The chapter on the "Policy of Expansion" refers to the time when there was a serious debate as to whether or not the Philippines should be retained by the United States, and gives a résumé of the arguments then adduced pro and con. In the chapter on "The Diplomacy of the Consulates" the author gives us some inside history of the relations between Admiral Dewey and Aguinaldo and his staff immediately prior to and after the battle of Manila Bay until the surrender

of Manila. The implication that there was an implied and express promise on the part of Dewey to assist Aguinaldo in establishing an independent state in the Philippines, which has been repeatedly made; is shown by the author to be, on the authority of the records of the American and Filipino Governments and armies, now accessible, wholly unfounded, and that the imputation made by Carl Schurz to the effect that America's early relations with the Filipino insurgents make "a story of deceit, false pretense, and brutal treachery to friends without parallel in the history of republics" is utterly false.

The second volume contains an account of the origin, institution, and nature of the Philippine Government, the manner in which it has been administered, and a summary and analysis of what has been accomplished by the Americans and Filipinos in the last sixteen years. "The Organization of the New Civil Government," the disentangling of the somewhat complicated affairs of the church and the state, the establishment of provincial and municipal governments, the splendid results achieved in the sanitation and health of the islands, and the almost unbelievable progress made in the material development and the opening of ways of transportation and communication are only a few chapters in which the author shows how the United States has discharged her duty toward the Philippines and their people. But its crowning success has been in the education of the Filipinos; in this task, to which the Filipinos have responded, America has spared no efforts and no expense. The popular idea was that the Filipinos were to be transmuted into Americans of the most approved type; but according to the author, "our ambition should be to make good and efficient Filipinos out of all the inhabitants of the Islands. It is not necessary to try to make Yankees out of them."

Judge Elliott has written of the American administration in a sympathetic spirit, but has not hesitated to criticize as well as to commend. In fact, in the opinion of the undersigned, the last chapter of his work contains too severe a criticism and too harsh a judgment on both American and Filipino officials under the administration of the last few years, which, the undersigned is sorry to say, does not harmonize with the rest of the work. There is a touch of the *personal* in his statements, and some facts and incidents are referred to and judgment passed on them when it is yet too early to do so, and still more when the results are in a way proving the contrary.

Events have succeeded each other in the last three years with such

rapidity that the Philippine Government is now under the immediate control of the Filipinos, and the ultimate success of America's experiment in nation culture depends upon the wisdom and ability of the Filipinos, instead of the Americans. If they succeed, "it will justify the faith in the inherent capacity of the natives upon which our Philippine policy is based, and redound to the honor of the United States and to the credit of the men who laid the foundation upon which the present structure rests."

I shall close this review by quoting the following paragraph from the preface of the author to the second volume:

I believe that the assumption of control over the Philippines could not honorably have been avoided without a shrinking from responsibility which would have been unworthy of a great and self-respecting nation. Its responsibilities have been borne without reward or hope of reward, other than that which comes from the faithful performance of gratuitous service for others. The United States is a greater and a nobler nation for having lifted the Filipinos out of the slough in which they were floundering and placed them well on the road toward nationality.

ANTONIO M. OPISSO.

America's Case against Germany. By Lindsay Rogers. New York: E. P. Dutton Co. 1917. pp. xv + 264. \$1.50 net.

In a compact volume consisting of a very useful bibliographical note, twelve brief and clear chapters, an appendix containing President Wilson's speech asking for recognition of the existence of a state of war, a list of German outrages on American ships and lives, and a sufficient index, Professor Rogers has presented the legal — and incidentally the moral — case of the United States against Germany.

The book is intended for the general reader. It gives an account as nearly as possible chronological, with explanations and interpretations, of the illegal acts of Germany and the consequent diplomatic controversies which ultimately left to the United States no alternative but to resort to arms in defense of American rights and the rights of all peoples. Untechnical, concise, and precise, it is easy reading and should serve admirably the purpose for which the author intended it: to contribute to the understanding of "the primary and indispensable part of America's case . . . which should be had by every intelligent citizen." It deals with practically all of the major points which have been at issue, many of them of course not exhaustively, but all clearly.

Though obviously not intended for technical use, the very characteristics which recommend it for the purposes of the lay reader give it a value for the jurist or the student of international law: it epitomizes; it states facts, cases, and arguments, briefly and clearly.

Professor Rogers has been especially successful in convicting the German Government, from the evidence and admission of its own statements, of the violation and disregard of law with which it has been charged.

There are points at which and features in respect to which it will occur to probably every reader familiar with the materials that a somewhat fuller treatment and some modifications of method might have been made. Greater uniformity in the matter of giving dates, and the inclusion of footnote references to diplomatic documents and others — with perhaps a compendium of the most important — would be useful. But, as regards choice and statements of fact, and interpretation and argument, the author has been conspicuously sound. He has not attempted to pass judgment on the policies or decisions of the American Government. One of the nearest approaches appears in the statement: "The pretense of armed neutrality was anomalous and inadequate;" but he shows how the administration itself soon realized this to be the case. Whatever diversity of opinion men held as to whether the United States was tardy in entering the war, — before at last it did enter, "the issue had been made translucently clear." If there are still any to whom the case of the United States against Germany is not thus absolutely and supertranslucently clear, to such in particular Professor Rogers's presentation of the case may be recommended.

STANLEY K. HORNBECK.

Los Extranjeros en Venezuela. By Dr. D. Simón Planas Suárez. 2d ed., Lisbon: Centro Tipográfico Colonial. 1917. pp. 368.

The first edition of this book was published at Caracas in 1905. This is much more than a reprint. The author says that changes in legislation had caused him to decide to revise and complete the work, adapt it to the laws now in force, and add portions needed to make it useful and practical. He considers it a patriotic service to explain to foreigners the liberal treatment offered by Venezuela, which country, he says, is destined to occupy a prominent place in future migratory movement because of its geographical position, its natural

wealth, the generosity of its people, and its admirable laws. He thinks such a compendium indispensable to foreigners in the country and to those outside who wish to know what their condition would be if they entered. It is also needed by the executive and judicial officials in Venezuela and the legations and consulates of that Power in foreign countries, and by foreign diplomatic and consular officials in Venezuela.

His introductory essay on "Foreigners in Antiquity, the Middle Ages, and Modern Times" is very interesting. From the Greek attitude of eternal war on the barbarians and the early Roman total disregard of the rights of foreigners, he traces the changing sentiment through the medieval ages, which he says was due to the Christian teaching of the essential unity of the human family. The law of nations, he thinks, had its birth in the Christian idea. Modern commercial relations and scientific discoveries, he adds, have brought mankind into such intimate relations that frontiers have disappeared and the individual has a universal country where his person, his dignity, and his independence are preserved intact. In most respects foreigners now enjoy the same privileges as nationals. The only important differences are that the former are deprived of certain political rights and, in case their presence might be dangerous to the state, may be excluded or even expelled.

His first chapter treats of "The Admission of Foreigners." The right to exclude implies the right to fix the conditions of admission. Venezuelan laws are extremely liberal, he says; but its frontiers are not open *ad libitum*. To establish beyond question the right to exclude and regulate he quotes from many well-known authorities on international law. Then he gives the provisions of Venezuelan constitutional and statute laws on the subject.

The second chapter is on "The Expulsion of Foreigners." After establishing the right by arguments and numerous quotations, he gives the provisions of Venezuelan laws on this subject. He follows this by a brief statement of the laws of expulsion in sixteen other countries, which makes this chapter of much wider interest and value than most of the others.

The third chapter sets forth the "Civil Rights of Foreigners," relating to domicile, marriage, divorce, property, inheritance, corporations, copyrights, trade-marks, patents, educational institutions, etc. The fourth treats of "Political and Public Rights and Duties."

The fifth deals with the knotty problem of "Claims Against the Nation" by foreigners, which has given so much trouble to Venezuela and to most of the other Latin American states, because of the effort of foreigners to hold the governments responsible for losses occasioned not only by the public authorities, for which liability is conceded, but also for losses caused by armed rebellion and other acts of violence which the officials were unable to prevent, and for which, he contends, they can not properly be held responsible. For such losses, he says, foreigners, as well as nationals, ought to depend on the courts, and not appeal to the diplomatic agents of the countries of their origin. The sixth chapter, on "Nationality," tells the various ways in which nationality in Venezuela may be acquired, — by naturalization, by marriage, by birth in Venezuela, the parents being foreign, and by the naturalization of parents. "International Penal Law" is the subject of the seventh chapter. It is a study of crimes committed outside of the territorial limits but punishable in Venezuela. The extradition of criminals is included under this head. Chapter eight, "Foreign Ships," studies the status, rights, privileges, and duties of foreign vessels, merchant and naval, in Venezuelan ports. The ninth, and last, chapter defines the "Immunities and Privileges of Foreign Diplomatic and Consular Agents."

For a book on a highly technical subject the style is pleasing. There seem to be needless repetitions of the same ideas, with only slightly changed constructions and relations. Many of these, however, occur in quotations; and others doubtless are a result of the operation of the legal mind in its effort to heap up arguments, precedents, and opinions to support its contentions. The book will undoubtedly be very useful to foreigners in Venezuela and also to many who are not and never will be in the country but who may have commercial relations with or merely an intellectual interest in that republic.

WILLIAM R. MANNING.

Teoría Crítica de las Bases del Derecho Internacional Privado. By Señor Doctor Don Orangel Rodríguez. Caracas: 1917. pp. x + 466.

This work is divided into three books. The first treats of what private international law is comprised. It contains an interesting discussion of the first cause of private international law and a com-

parison between public and private international law. It also discusses the considerations which Lorimer makes in the classification of international law, and the opinion of Surville on the differences between public and private international law. The author then cites concrete cases in application of what he has stated, among which are the case of the Orinoco Steamship Company, Ltd., between the United States and Venezuela, one of the claims between Mexico and Venezuela, and the Rudloff case.

The first chapter of his first book deals with fundamental notions. He states that while man is generally subject to the laws of his native country, he often resides or is domiciled in another state, or travels beyond the jurisdiction of the laws of his own state, and comes under foreign control. He points out that public international law, equally with private international law, has for the reason of its existence the change of abode and of relations between men of different states, which supposes relations of a public character as much as those of a private character. The first is found in relations of general interest between the states, while the second is supported in the relations which are of private interest, or which include that interest.

The author shows that it is not disputable that relations strictly civil enter in the sphere of private international law. But the same does not happen with reference to mercantile relations. It can be pretended that commercial law is of a different nature from civil law. He states consequently the affinity between public international and private international law, which is constituted by the circumstance that both suppose relations between states and is to be understood solely in the limited form that the principles of the first determine the original foundation of the extra-territoriality applications which serve as the object for the second.

The second book treats of the sources of private international law and the connection between jurisprudence, customs and treaties. The conflicts of jurisprudence and of treaties are given considerable thought. To find the fountain of international private law various origins have been proposed, such as custom, jurisprudence, international treaties, and the doctrines of jurisconsults. The author believes that states ought not to legislate over foreign rights.

In his third book the author discusses the judicial reasons for the extra-territoriality of laws, the absolute sovereignty of nations, and the theory of strict law. He states that extra-territoriality of laws

is due above all to international convention. He shows that, according to Savigny, a system of universal justice is considered as the foundation of the extra-territoriality of laws, but that his theory lacks scientific value. His conclusion is that extra-territoriality is not founded on the principles of justice.

This work shows a large amount of study and research. The standing of the distinguished writer justifies its careful study in order that those who are interested in international law may profit by the views he offers and by the examples he sets forth. The book is among the notable contributions of South American internationalists during the past year.

WALTER S. PENFIELD.

Éléments d'Introduction générale à l'Étude des Sciences juridiques. I: La Définition du Droit. By Henri Lévy-Ullmann. Paris: Recueil Sirey. 1917. pp. 176. 10 fr.

The remark of Kant that jurists still are attempting to discover an acceptable definition of law is as true today as it was when the Critique of Pure Reason was first printed. There are only a handful of sciences which can successfully construct definitions—mathematics, pure mechanics, logic. The rest, which do not deal with an arbitrary subject-matter, never arrive at more than provisional, utilitarian, and hypothetical definitions. Would it not be more useful if the effort had been made, not to attempt another hypothetical definition to be added to an already considerable list of ventures in this direction, but to investigate the bases of legal definitions, the considerations which may or do enter into the construction of such definitions? No thoroughgoing effort of this kind seems to be recorded. That at least would be a novelty, which the search for a definition of law is not. Among such considerations (some of which are discussed by the author in a criticism of previous definitions) are the various metaphysical and practical points of view, the genetic, historical, comparative, and dogmatic approaches, causal and teleological methods, sources, forms of expression, forms of application, sustaining factors, etc.

There are two general types of definitions, the material (of which the sociological definitions are examples, *e.g.*, Jhering, Duguit) and the formal (of which the author notes the definition of Zachariæ as an example). The author takes a middle ground by departing from the method of Jhering to arrive at a new formal method. Juridical

definition, says the author, has a double task, that of *precision* or the disengaging from the idea to be defined of the specific characteristics which distinguish it from other notions of the same kind, and that of *evocation*, which exhibits its relations. His provisional formula of *precision* is that "law is the delimitation of what may be done or may not be done without incurring [the risk of] a judgment, attachment, or a special use of force." With the aid of *evocation*, his definition reads: "law is the delimitation of what man and human groups have the liberty of doing or not doing without incurring [the risk of] a judgment, an attachment, or a special use of force."

The author has consciously made a definition broad enough to transpose international practice from the field of morals or deportment to the realm of law.

ALBERT KOCOUREK.

The Grotius Society. Problems of the War. Papers Read before the Society in the Year 1916. London: Sweet and Maxwell, Limited. 1917. pp. xxv + 178. 6 s. net.

This volume contains an introduction by Professor H. Goudy, Regius Professor of Civil Law at Oxford, Vice President of the Grotius Society (founded in 1915), and the following papers: "The Treatment of Enemy Aliens," by Sir Ernest Satow, "The Appam," by Hugh H. L. Bellot, "The Principles Underlying the Doctrine of Contraband and Blockade," by J. E. G. de Montmorency, "War Crimes: Their Prevention and Punishment," by Hugh H. L. Bellot, "The Nationality and Domicil of Trading Corporations," by Ernest J. Schuster, "Neutrals and Belligerents in Territorial Waters," by Sanford D. Cole, "De la Belligerance dans ses Rapports avec la Violation de la Neutralité," by Professor Ch. de Visscher, "The Effect of the War on International Law," by Rev. T. J. Lawrence, "International Leagues," by W. R. Bisschop, "The Enforcement of the Hague Conventions," by W. Evans Darby, "The Treatment of Civilians in Occupied Territories," by Sir Alfred Hopkins, "War Treason," by Professor J. H. Morgan, "Destruction of Merchantmen by a Belligerent," by Sir Walter G. F. Phillimore, Bart.

It is impossible to summarize the papers here presented, but suffice it to say that they are practical discussions of questions relating immediately to the war, in which there is interwoven historical matter of technical value relating to the origin and progress of the legal doc-

trines considered. Although the writers represent an avowedly British society, their viewpoint is international. Their moral tone is severe, as is evidenced by their condemnation of Germany's extension of the law of military necessity, but it is high, and while there is justification of reprisals, there is no vengeful insistence upon retaliation. Throughout the volume there is manifested a desire for reform that will appeal to men of good heart everywhere, although they may not accede to all the suggestions offered. At the end of some of the papers is a questionnaire as to points raised in the text which encourages the reader to investigate them for himself. Of speculation as to reorganization for permanent peace after the war, in which Americans are apt to be especially interested, there is very little, but there is a realization of the difficulties in the way, which we often overlook, and a critical analysis of the plan of the League to Enforce Peace.

Looking forward to improvements in the laws of war and neutrality, Dr. de Montmorency favors putting upon neutrals the burden of restraining their citizens in the export of munitions rather than imposing it upon belligerents. In his opinion their enforcement of the law of contraband is but a form of self-help, which is a crude stage of the law; and he believes that if, in 1793, the United States had forbidden traffic in duly notified lists of contraband and put a ban on running cargoes through adequately blockaded areas, instead of justifying trade in arms, this country would have conferred a lasting benefit on mankind. Mr. Cole, following a tendency in the other writers to exalt international public opinion above force as a sanction, proposes that laws regulating the rights and obligations of belligerents in neutral territorial waters should not be referred as formerly to the physical force that one nation, the offended neutral, can exercise, but should be based on the sanction of the general opinion of civilized people, in whose interest international law should be made. He proposes strengthening the position of neutrals and restricting the facilities allowed to belligerents. Voicing the popular demand for the punishment of war crimes, Dr. Bellot suggests that during the war the Allies should notify the Central Empires that not only the authors and instigators of outrages upon humanity, but also the actual perpetrators of all violations of the laws and usages of war, whether the offenders are acting under orders or not, will be held as war criminals. He proposes an after-the-war conference of the Powers for the revision of the rules of war in the light of present experience, and suggests

that to each offense there should be attached an appropriate penalty, but he would also provide for appeals in certain cases from courts-martial to higher criminal courts of the captor country or to a Hague criminal court of appeal, if instituted, and he suggests that this Hague court might be given original jurisdiction for the trial and punishment of offenders. Dr. Lawrence, who feels that in respect to atrocities the situation is worse than it was when Grotius wrote his great book, believes that a more comprehensive revision of the Hague *règlement* and other texts is required, and that it may be necessary to establish neutral tribunals to try breaches of it. Like his colleagues, he realizes that this war, fought under new conditions, by whole nations in arms instead of armies alone, has evolved new methods and established new precedents, some of which are of doubtful validity. He is against the indiscriminate sowing of mines in the seas. Allowing for differences in the spirit and method of the belligerents, he criticizes the wide extension of war zones as an infringement of the freedom of the seas. He deplores the illegal use of submarines, but sees in their increase in size a possibility of their conforming, except that they travel under sea, to the customs of regular cruisers in respect to search and capture. He is of opinion that there will have to be a new statement of the law of contraband and blockade. Sir Walter Phillimore favors reprisals now, but after the war a convention for the better protection of the lives and property of neutrals.

The two writers who turn aside from the laws of war and neutrality to discuss international peace reorganization see merit in the plan for the League to Enforce Peace as compared with the present chaos, but neither accepts it. Dr. Bisschop, however, who discusses unions, likes its leading idea of creating machinery to secure delay before a power can go to war. Dr. Darby objects to the military aspect of the plan of enforcement as a peace-making measure and regards it as a setback to the Hague procedure. He prefers the sanction of public opinion to that of armed force. He is inclined to suspect the proposition of the League as an alliance for the domination of the world by the United States in the interests of peace and the regulation of backward nations, but comes out for the anticipative and preventive principle of international federation, of which he cites the United States as an example. We fear, however, that Dr. Darby misunderstands the origin of the plan of the League and that he may also have confused the treaties for the advancement of peace, sometimes called

the Bryan treaties, with the Hay or with the Taft arbitration treaties. But now that our troops are in France he can no longer, as in 1916, say that our national attitude towards the issues of the war is one of sensitiveness towards our own selfish interests, but of silence towards the nonobservance of Hague conventions or violations of international law that only concern other countries.

JAMES L. TRYON.

La Neutralidad y la Beligerancia de la República de Cuba durante la Guerra actual. By Gustavo Gutierrez. Habana: Imprenta "El Siglo XX" de Aurelio Miranda. 1917. pp. 154.

This little brochure was prepared by the author for his doctorate degree in the University of Habana and is likely to prove useful for those who desire some information relative to the Cuban point of view of the pending war and of the steps leading up to the declaration of war by Cuba. The author finds Cuba in war with the German Government for two reasons, one referring to the law of nations, and the other to its international political situation, determined in this case by the bonds uniting it to the United States. He strongly dissents, however, from the position which he finds taken by the Cuban President, that there exists a veritable alliance between Cuba and the United States.

The writer apparently takes satisfaction in the fact that Cuba, in making use of the right to declare war and peace, which belongs to all sovereign nations, has affirmed its international personality as an independent nation, while, because of its physical situation, with reference to the Panama Canal and the nations of the south, he believes that its military, commercial and political importance is bound to augment very rapidly. He looks forward to Cuba bringing forth all its forces on the termination of this war to the end that the nations of America and others of the world may be induced to maintain the neutrality of his country. As giving a glimpse, therefore, of the attitude of some Cubans, the work has its special value.

JACKSON H. RALSTON.

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(Mention here does not preclude an extended notice in a later issue of the JOURNAL.)

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Reports to the Hague Conferences of 1899 and 1907. Being the official explanatory and interpretative commentary accompanying the draft conventions and declarations submitted to the conferences by the several commissions charged with preparing them, together with the texts of the final acts, conventions and declarations as signed, and of the principal proposals offered by the delegations of the various Powers as well as of other documents laid before the commissions. Publication of the Carnegie Endowment for International Peace, Division of International Law. Edited, with an introduction, by James Brown Scott, Director. (Oxford: The Clarendon Press. 1917. pp. xxxii, 940.)

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Trading with the Enemy. By Charles Henry Huberich. (New York: Baker, Voorhis and Company. 1918. pp. xxxiii, 485.)

European Treaties Bearing on the History of the United States and its Dependencies to 1648. Edited by Frances Gardiner Davenport. (Washington: The Carnegie Institution. 1917. pp. vi, 387.)

Early Diplomatic Relations between the United States and Japan, 1853-1865. By Payson J. Treat. (Baltimore: The Johns Hopkins Press. 1917. pp. ix, 459. \$2.50.)

The President's Control of Foreign Relations. By Edward S. Corwin. (Princeton: University Press. 1917. pp. vi, 216. \$1.50.)

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The Commonwealth at War. By A. F. Pollard. (London: Longmans, Green and Company. 1917. pp. vi, 256. \$2.25 net.)

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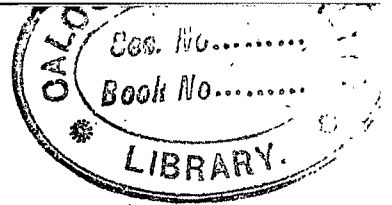
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KATHRYN SELLERS.



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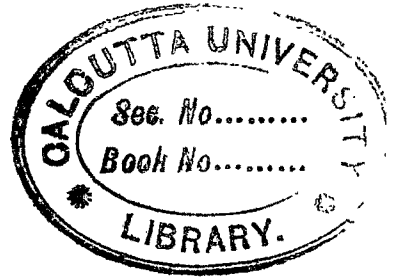
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THE MEMBERSHIP OF A WORLD TRIBUNAL FOR PROMOTING PERMANENT PEACE

It is generally believed that some kind of an agreement between some, at least, of the different governments of the world, for the better regulation of their mutual relations, must follow the close of the present wars in order most effectively to promote permanent peace. Such an agreement would naturally take the form of a treaty. It is not too soon for all peoples to consider what should be its essential nature. From a state of peace to a state of war is a short step. From a state of war to a state of peace is a long one. Official overtures of a more or less informal character must come first. A preliminary protocol of some kind must then be framed, either with or without a suspension of hostilities. One or more peace conferences naturally follow, to make more definite and permanent arrangements, and their work must practically be ratified by the legislatures of the Powers concerned. Meanwhile public opinion in each of these countries must be considered and clarified. All this takes time, and the most enduring peace is apt to be one that has not been hurried to a conclusion.

It required more than seven years of negotiation to put an end to the Thirty Years' War. Three were spent in feeble and sporadic attempts at a settlement. Four followed which laid, by the Peace of Westphalia, the foundation of modern political history. Meanwhile fighting continued, and with the bitterness which has always characterized wars of religion. The very men who finally agreed on terms of peace met in separate congresses, one Protestant and the other Catholic, one in Münster and the other in Osnabrück.

They would not have agreed on them so soon had not, early in that war, international law been systematized by Grotius. Every treaty rests on public law. The public law of the world is continually growing. Its essential principles are receiving new applications and interpretations from year to year. Their relations to society are shifted.

New rules are added. Old rules are modified. The treaty that is to end the present wars will relate itself to the public law of the day. And how is it to be determined what this law is? It will, on important points, be for those making that treaty to exercise that power, in behalf of those for whom they act; and, if they exercise it wisely, they may thus permanently affect the course of legal history as to the entire family of nations.

But this family as a whole has a direct interest of its own in whatever belongs to public law. The present wars have shown that there is a grave question whether some of the rules attributed to it have ever existed or, if they once existed, exist now. The restoration of peace will present a great opportunity to restate that law, authoritatively, by general consent.

The restatement of public and of international law would be of the greatest potential value if an agency existed by which, as restated, it could and would be applied to settle future disagreements between nations. The Hague Peace Conferences of 1899 and 1907 made substantial progress in these directions. So did the London Naval Conference of 1908, at which, in 1909, the Declaration of London was framed. We must not allow the advantages thus gained to be lost. Ground once secured must not be surrendered. Half the world met for a friendly interchange of views as to the best way to promote international peace, at the first Hague Conference. All the world met at the second. A new point of departure was thus attained.

Whatever new provisions for the maintenance of peace are devised, they will be most apt to endure if there is some historical foundation on which to rest them. They must be a product of evolution from former rules affecting international relations. These rules are part of the international capital of mankind. It is a capital to be carefully guarded with a view to its gradual increase.

It may be assumed that there will ultimately be either a peace congress to close the present wars, composed of representatives of the leading belligerents on each side, and probably of all the belligerents; or two peace congresses for that purpose: one composed of all the nations which are at war with Germany and her allies, and one representing the latter. The second plan would be that which was adopted

to close the Thirty Years' War, — two congresses sitting at the same time, and communicating with each other through some sort of mediation. The first plan is the simpler and more direct.

But whichever may be adopted, the main work to be undertaken will be to accomplish a general pacification by common agreement on reasonable terms. The office of a peace congress is to make peace. Whatever more it might effect in defining or improving the public law of the world, or creating new facilities for defining or improving it, could probably be better effected by a congress called specially for that purpose, and proceeding with the deliberation necessarily to be expected from such a body.

It is also true that a peace congress, after bringing a war to a close, can adjourn for a considerable period, to be reconvened as a congress for the settlement of general principles of international conduct. It may be doubted, however, whether a congress of the latter kind, even with large changes in its membership, could ever approach the subject with the freedom from influences occasioned by the war, and the juristic sense and power, that might be expected from a body newly and specially constituted for its consideration.

It is fortunate that we have already a world tribunal, created by a common agreement for the settlement of international disputes, and which has proved its right to exist by what it has already accomplished. The Permanent Court of Arbitration, commonly called the Hague Tribunal, is the work of two peace congresses. As revised in the second, it is the voice of an association of nations universal in character. Notwithstanding the pending wars, its functions continue the same, though for the time being it has not been called on to exercise them. One of its distinctive features is that its members are a panel of between one and two hundred, coming from all nations. Not all sit in every instance. The particular nations which may be parties to a dispute choose each two of the members to constitute with an umpire the tribunal in that particular case. The fundamental requirement here is the absolute equality of the contending nations before the court and in the preparation for the court.

As to the court itself, no one, except the umpire, is eligible as a member unless he be of recognized competency to pass on questions

of international law and of the highest moral reputation. But as to the governments which choose them there is no distinction. The greatest and the least Powers stand here on the same footing. There is no inquiry into their national characteristics or moral reputation. So long as they are recognized as political sovereigns, they can appeal to the Permanent Court of Arbitration. Their previous records can not serve to exclude them. So long as a political sovereign, party to such a proceeding, selects, through such of its authorities as may be charged by its own laws or institutions with the conduct of its foreign relations, the two judges whom it is entitled to place upon the court, it can not be objected that those authorities were not duly qualified to make the selection.

Should such a body as is now proposed by the League to Enforce Peace come into existence after the present wars, a very different set of considerations would apply to the mode of its organization. Inequality, rather than equality, would, in some things at least, be the guiding principle. It would have the most delicate duties to discharge. It would be a council of nations rather than a court of justice. It would be apt to prove, in essence, something like the Diet of the former German Empire and the later Germanic Confederation, with its power of issuing a "federal execution" against any recalcitrant state. It is not to be forgotten that it was an exercise of that power which finally led to the destruction of the Confederation in 1866.

A bold attempt to plan out such an international assembly for the government of the world was made in 1911 by Mr. Jerome Internoscia of Montreal. It was to consist of one or more delegates from any adhering state, according to its population; to have executive, legislative, and judicial powers; to sit part of the year as a legislature and part as a court; and to be supported by an irresistible military and naval force. Action on all matters was to be determined by a majority vote. This, while a fantastic scheme, is worth mention, because of its fundamental postulate that any state in the world, at all times, must have a right to representation in such an assembly. This, of course, does not proceed from the principle of jurisprudence which guarantees to every one his "day in court." A man charged with some fault before a court can claim, not to be a member of the court,

but to be heard before it. If assailed there, he must be allowed to defend there. This is a right that belongs even to alien enemies.¹ It can, in the nature of things, belong no less to a nation and to every nation.

In any international conference that may be convened to plan for putting an end to the present wars, it can hardly be doubted that each of the belligerent Powers will be at least asked to participate. It would seem probable that two such assemblages would be found necessary, one of a preliminary nature, to settle the points of most immediate importance, and one to act finally on all matters remaining unsettled. The latter might be an adjourned session of the first, but would be more likely to be separately constituted. In the first, called to try to create peace, the military questions involved would call especially for consideration by military officers; in the second, called to try to improve international conditions in time of peace, there would be more need of the services of statesmen and jurists.

When, in 1814, the Powers successful in overthrowing Napoleon convoked the Congress of Vienna, while they allowed France to join in the call, they hoped, by a secret agreement made for that purpose, to exclude her from any real voice in the proceedings. France nevertheless claimed an equal voice when the Congress met, and it was conceded to her. It could not have been denied if the Treaty of Vienna was to have any permanent effect on her relations to the other European Powers.

So in the organization of any world tribunal of justice which may follow the present wars (whether it be the present Hague Tribunal, or the Court of Arbitral Justice contemplated by the draft of a convention approved by the Hague Conference of 1907, or something better than either) every civilized nation should have a voice in the international assembly from which it may proceed.

Justice would not demand that it should be an equal voice. Rather it would demand that the small Powers should not have this. Whether the representation of each should be equal in number or unequal, the weight of every vote should be proportioned to the weight of the Power which casts it.

¹ *Ex parte McVeigh*, 11 Wallace, 207.

In preparing for the Congress of Vienna, Talleyrand wrote and the King adopted instructions to the French ambassadors, from which the following extract is taken:

The general equilibrium of Europe can not be composed of simple elements. It can only be a system of partial equilibrium. The small or medium states should be allowed a vote only in the questions concerning the particular system to which they belong — the states of Italy in the arrangements relative to Italy, and the German states in the arrangements relative to Germany. The great Powers alone, being interested in the whole, should coördinate each part with regard to the whole.²

A mode of obtaining the same general result would be to make voting power, in international congresses and courts, relative to population, or to the general magnitude and diversity of interests to be guarded by the greater nations. It was in this way that the congress proceeded which met in 1906 to regulate wireless telegraphy.

It has been suggested that the scheme of successive Hague Conferences, under which two have already been held and a third resolved on, should be replaced by conferences of limited instead of unlimited membership. There is already an association of nations of the first importance headed by Great Britain and France, and another of a like character, though less numerous, headed by Germany and Austria-Hungary. Why not make use of these as instruments for the reconstruction of social order in the family of nations? The objections to such a proposition would seem conclusive. Each would be the rival of the other in attracting adherents. Each, whether in court or congress, would add to the natural force of nationality the artificial influences incident to its own existence. There would naturally be two leagues, two courts, two tendencies of thought, two views of public law. Given two leagues, it would be practically impossible not to have two international courts. Given two international courts, and it could hardly be expected that they would always agree on points of international relationship. The continued existence, also, of two powerful alliances, originally formed for purposes of war, would be a constant menace to the peace of the world. The innate character and common experiences of each would at once, or certainly eventually,

² Broglie, *Memoirs of Talleyrand*, II, 157, 172.

bring a new and positive element of discord into the society of nations. If each alliance maintained an international court, these courts might be expected often to differ in their conclusions. If only one maintained such a tribunal, its judgments would be considered of light weight in countries not in the alliance to which it owed its origin.

There certainly ought to be, in the interests of human society, one standing tribunal of justice for the world. There is one now, though far from perfect, — the Permanent Court of Arbitration. A plan for adding what may prove a better one, the Court of Arbitral Justice, has proceeded from the same source. It may be possible and practicable to adopt some new method, either independent or supplemental, of attaining the desired end that is better than either or both. But it will only be if all civilized nations are asked to send delegates to the conference which devises that method, and probably not unless membership in the new tribunal is made open to all citizens of each on terms that give every country such weight of choice as its relative importance fairly merits.

The Hague Convention of 1907 for the creation of an International Prize Court, which failed of ratification, followed in most particulars these general principles. Its scheme, however, in securing on a bench of fifteen judges eight places for the great Powers, the others being filled by the lesser Powers in rotation or by lot, did not satisfy the views of the latter as to equity or right. The distinction between the two classes of Powers was deemed to be too pronounced.

Questions of this kind will be less easy to answer if a new world court is established with powers of physical coercion. The greater such powers, the harder it will be to agree on the method of choosing those to whom they are to be intrusted.

To the writer the objections to enforcing compliance with the orders of any world tribunal by its active use of a military and naval establishment seem insuperable under the conditions that will immediately follow the restoration of peace. The existing feelings of enmity between the peoples of the contending Powers will be too strong. Time only can conquer them. It may well be doubted if that would ever bring the world together as a fighting force to compel any particular sovereign to obey the decrees of such a tribunal. There well might,

however, be an agreement to resort to international outlawry, or, in some other way, to use economic and social pressure under such circumstances, which would command general consent.

Wherever there can be instituted, by order of an international court, a state of what would amount to "imperfect war," the court would be kept filled with generals and admirals. A court of justice ought to have a bench of jurists.

It ought also to be such as to entitle it to be looked to as a court of honor. It must stand and prove its right to stand as an *Ehrengericht*, whose decisions can not be disregarded by honorable men, whether acting for themselves or for nations. Its real charter must proceed from public opinion.

Its members should be above reproach or suspicion of reproach. They should be originally selected only after painstaking inquiry as to their position and character.

Had the appointments of the American members of the present Hague Tribunal been submitted to the Senate for ratification, it would have given a public guaranty of their fitness for such a position, which would have been justly regarded by other nations as of high importance. Still more would such a mode of procedure be of value should any such court of arbitral justice with a small and definite membership be organized as was proposed by the Hague Conference of 1907.

Another possibility in world reconstruction which deserves consideration in this connection is the formation of a confederation of nations with power to judge between them, but whose judgments should be enforceable only according to the determination of another and distinct tribunal. The confederation might decide that one of its members had committed or was threatening to commit some act in breach of its international duties, and then it might be reserved for some kind of executive council to promulgate and execute the judgment.

In mediæval Germany disputes between the states of the Empire had come to be generally regarded as proper subjects of arbitration. The arbitrators (*Austregues*) were commonly agreed on by the states concerned, sometimes chosen by lot. The Diet of Worms, in 1495, framed what it deemed a better plan to preserve perpetual peace within

the Empire.³ This provided that if any party to such an arbitration did not accept the decision as final, it might appeal to a standing Imperial Chamber of Justice (*Reichskammergericht*), composed of seventeen judges, proceeding according to the principles of the Roman law; but that the judgments of the Chamber were only to be executed as and when an Imperial Council (*Reichsregiment*) might determine. A few years later this function was confided to "circles" of neighboring states, and the Imperial Council soon gave way to the Aulic Council, a mere mouthpiece of the Emperor.

Hamilton, in the *Federalist* (No. LXXX), in urging the necessity of securing the peace of the United States by a judicial determination of controversies between the States of the Union, spoke of the institution of this Imperial Chamber of Justice, in 1495, as a wise and successful measure.

Under any such plan (whether a previous resort to arbitration should be required, or not) the body which was to speak first as a regular court of justice would naturally be composed of jurists and publicists, for their office would be to settle rights. The other body would be largely concerned with functions of policy and expediency. It might be of opinion that the case was governed by the principle, *Summum jus, summa injuria*, and so refuse to issue an execution. It might believe the judgment to be right on all points and yet decline to take any action. A council with authority to act in such a manner would be mainly executive in character. Its members, therefore, would naturally be men of affairs rather than of books.

There are those who would exclude from a share in framing a world tribunal for promoting permanent peace any state which is in a marked degree inferior to most of the other Powers as respects the education and general cultivation of its people. Such a test is one difficult to apply and invidious in its nature. It might result in a discrimination that would bar out Powers of large population and extensive trade, though they have political leaders of the highest rank for learning, wisdom, and character. A body to promote the peace of the world can not safely be founded on principles of inequality and exclusion.

SIMEON E. BALDWIN.

³ Robertson, *History of Charles V*, I, 359; Hallam, *Middle Ages*, 306; Snow, *Report of the Am. Society for Judicial Settlement of International Disputes for 1916*, 47.

THE NEUTRALITY OF SWITZERLAND

II.

GENEVA, THE PAYS DE GEX, AND HAUTE-SAVOIE

THE conception of a permanent neutrality for Switzerland sharply differentiates itself from the various phases of neutralization created chiefly after the Congress of Vienna in Europe and elsewhere in the important respect that in the case of Switzerland the Powers did no more than attempt to crystallize in diplomatic and lasting form a political condition which had, as we have heretofore seen, characterized the country during nearly three centuries. The Powers, consequently, merely recognized an existing status and one deemed essential as well to the peace of Europe as to the welfare of Switzerland itself. But at Vienna it was clearly seen that recognition would prove valueless were it not supported by an international guarantee, and one, moreover, which would not only necessarily take the shape of an international protection of Switzerland against outside aggression, but also conserve a unitary and harmonious federal administration within the Swiss boundaries. We are not surprised, accordingly, to find the conception of such a guarantee appearing in the various diplomatic documents heretofore noted which create or attest Swiss neutrality, as in the Treaty of Lunéville, February 9, 1801, and the identical treaties concluded at Paris, May 30, 1814, known as the First Peace of Paris (noted in Part I of this series, April, 1918, JOURNAL, p. 241, at p. 246), in which Swiss independence and self-government are expressly recognized: "*La Suisse, indépendante, continuera de se gouverner par elle-même.*" (Art. VI)

Before the Vienna Congress, then, there lay the problem of not merely declaring the fact of Swiss neutrality, independence, and self-government, but of providing, further, such practical means as lay within the power of the envoys toward assuring a lasting maintenance

in the new Swiss commonwealth of these international and constitutional safeguards.

If we glance at a map of Switzerland and its borders as they existed in 1814, we shall find that the results of Napoleonic conquest as well as previously existing territorial alignments had combined to withhold an adequate military frontier from any union which the existing Cantons could reasonably expect to form. Along the northwestern fringes of the country an extensive territory, formerly in the possession of the Prince-Bishop of Basel-Pruntrut and comprising, in the long ranges of the Jura highlands, a series of natural defenses of great strength, had been annexed to France, while along the southeasterly Swiss border the deep valley of the Rhone (Valais) with its lofty Alpine walls had been seized also and placed within French jurisdiction as the Department of Simplon; similarly the geographically detached city of Geneva, an ally of Bern and Freiburg, and so of the Swiss federal system, had been taken over as well as the neighboring province of Savoy, now separated from Sardinian jurisdiction to form a province of Napoleon's Alpine possessions, and divided into the new departments of Léman and Mont Blanc, which roughly corresponded to the former Haute-Savoie and Savoie (Sabaudia).

Thus Switzerland's natural mountain defenses had been practically taken from her. Geneva, too, even if restored by the Allies to its former territorial condition, lay quite apart from actual contact with the true Swiss borders, since the city controlled but a tiny area of land in its immediate vicinity, the balance of the Canton being scattered on either side of the lake and to the south of the city itself in a series of *exclaves*, five in number, with which communication could be had only over French or Savoyard country. Accordingly, while the Committee of the Allies on Swiss affairs at Vienna determined upon the restoration of Savoy to its rightful sovereign, the King of Sardinia, they also admitted the necessity of obtaining from both Sardinia and France such territorial concessions as would convert the practically dismembered Canton of Geneva into a unified territory, and secure also direct communication between Geneva and the rest of Switzerland on the northerly side of the lake by bringing the Genevan frontier up to the borders of Canton Vaud a few miles to the northwest of the

city, from which it was effectually separated by the ancient French district of Gex. Such a scheme, nevertheless, would still leave the eastern and southern borders of Canton Geneva in Sardinian possession, while the Rhone valley, or Canton Valais, would be separated from the southwest extremity of the new proposed Swiss federal system by the Sardinian provinces of Chablais and Faucigny.

These territorial conditions carried with them the menace, too, of economic disaster to Geneva, which largely depended for food supplies on France and Savoy. Thus it was that in a notable interview granted by the Emperor Alexander of Russia to the Genevan envoys De Rochemont and D'Invernois, October 23, 1814, De Rochemont said to the Emperor that without a territorial addition on the west, Geneva must remain at the mercy of France with respect to the obtaining of supplies from the rest of Switzerland as well as from France itself. Remedial territorial concessions, it appeared, had been in fact admitted by all the Powers save France at the first Congress of Paris in May, 1814, but Talleyrand's opposition proved fatal. De Rochemont, indeed, candidly avowed his belief that the Allies should also obtain for Geneva the entire Savoy territory south and east of the city, and comprising the districts of Faucigny and Chablais with part of Genevois, since the magnificent Simplon road as then lately reconstructed and extended by Napoleon afforded an open route from the French frontiers south of Geneva along the southerly side of the lake and over the high Alps of Canton Valais to Italy, thus offering a military highway likely to prove formidable to Swiss interests. A similar though less important yet splendid road ran along the northerly side of the lake from Geneva connecting French territory with northwestern Switzerland, and known as the Route de Versoix, taking its name from the little town of Versoix lying on the lake a short distance above Geneva and notable as having been fixed upon by De Choiseul under the *ancien régime* as a point which might readily be developed in importance and made a successful rival of Geneva, — a plan openly encouraged by Voltaire, whose home at Ferney lay but a few miles away.

While at the First Peace of Paris, as has been stated, Geneva failed to secure the actual cession of any French territory, it did obtain, in Article IV of the identical treaty between Austria and France, signed

on May 30, 1814, the right to use in common with France this Versoix roadway. And a year later at Vienna, in a declaration touching Swiss affairs, signed by the Powers March 20, 1815, Geneva secured (in Article V) an agreement on the part of France to place its customs line on the west of the Versoix highway so that the road itself would now become practically a free means of intercommunication between Geneva and Switzerland. A few days later, on March 29th, the Sardinian envoy, Saint-Marsan, signed a protocol agreeing to the *désenclavement* of some of the separated Genevan districts (*exclaves*) which had been effectually locked up within Savoyard territory; the intervening Savoy country was to be assigned to Geneva, together with a freedom of transit over the Simplon road similar in character to that granted by France over the Route de Versoix. Furthermore the far-outlying Genevan *exclave* of Jussy to the northeast in Haute-Savoie was granted free route-communication with Geneva, as was Peney on the northwest. The final cession of the territory separating Geneva from Jussy was accomplished in Article I of the treaty between Sardinia and Switzerland, signed at Turin, March 16, 1816, and which, taken together with the *procès-verbal de limites* executed on June 15th following, carefully marks out the new Swiss-Savoyard boundaries.

The free right of passage on both the northerly and southerly sides of the lake, together with the neutralization of those portions of Savoy which adjoin Geneva on the south and east, appeared to be all that could be reasonably hoped for from the Congress of Vienna, whose slowly-moving proceedings are accurately reflected in the but recently published journal of Jean-Gabriel Eynard, who accompanied his uncle, De Rochement, as private secretary and whose picture of Swiss efforts at the Congress is the best that we have. Eynard, who was at this time in his thirty-ninth year and who lived until 1863, was one of Geneva's foremost citizens. His memory is preserved in the fine building known as l'Athénée near the Botanic Gardens.

The event, however, proved more favorable to Geneva and Switzerland, for not only was a free right of passage ultimately secured along the Versoix and Simplon highways, but at the Second Congress of Paris, November 20, 1815, when Victor Emmanuel recovered the balance of his ancestral territory, France was further compelled to

yield to Switzerland for the benefit of Geneva that portion of the Pays de Gex lying east of the little river Versoix and along the lake borders, thus giving Geneva territorial communication with the Confederation. At the same time France agreed to place its customs frontier west of the Jura mountains, practically extending Swiss jurisdiction, so far as customs might be concerned, over the whole district of Gex.

In this manner, then, there arose the first of the so-called Genevan free zones, the zone of Gex. The second or Savoyard tariff-free zone surrounding Geneva on the south and east was formed by the Treaty of Turin, March 16, 1816, and widely extended by imperial French decree in 1860 after the territories of Savoy had come into possession of the French Crown as compensation for the aid extended by Napoleon III to Sardinia in the war with Austria in 1859. The diplomatic development of the zones can be most clearly appreciated in the actual documents creating them; these are the following:

30 mai 1814. — Autriche et France. — Traité de Paix, Signé à Paris

Art. IV. — Pour assurer les communications de la ville de Genève avec d'autres parties du territoire de la Suisse situées sur le lac, la France consent à ce que l'usage de la route par Versoy soit commun aux deux pays. Les Gouvernements respectifs s'entendront à l'amiable sur les moyens de prévenir la contrebande, et de régler le cours des postes et l'entretien de la route.

These provisions of the First Peace of Paris were incorporated in a declaration prepared by the Swiss Committee at Vienna:

*Déclaration des Puissances sur les Affaires de la Confédération
Suisse, Signée à Vienne, 20 mars 1815*

(Annexe no. 11 de l'Acte final du Congrès de Vienne du 9 juin 1815)

Art. V. — Pour assurer les communications commerciales et militaires de Genève avec le Canton de Vaud et le reste de la Suisse, et pour compléter à cet égard l'article IV du Traité de Paris, S. M. Très-Chrétienne consent à faire placer la ligne de douane de manière à ce que la route, qui conduit de Genève par Versoy en Suisse, soit en tout temps libre, et que ni les postes, ni les voyageurs, ni les transports de marchandises n'y soient inquiétés par aucune visite de douanes, ni soumis à aucun droit.

Il est également entendu que le passage des troupes Suisses ne pourra y être aucunement entravé.

Dans les règlements additionnels à faire à ce sujet, on assurera de la manière la plus avantageuse aux Genevois l'exécution des traités

relatifs à leurs libres communications entre la ville de Genève et le mandement de Peney, S. M. Très-Chrétienne consent en outre à ce que la gendarmerie et les milices du Canton de Genève passent par la grande route du Meyrin dudit mandement à la ville de Genève, et réciproquement, après en avoir prévenu le poste militaire de la gendarmerie Française le plus voisin.

Les Puissances intervenantes interposeront de plus leurs bons offices pour faire obtenir à la ville de Genève un arrondissement convenable du côté de la Savoie.

A few days later, in the Sardinian protocol of March 29th, the Crown agreed to these proposed territorial concessions, reserving, however, ownership of the Simplon highway, although yielding a right of passage which has beyond reasonable doubt continued to exist as an international servitude in favor of Geneva to the present time.

Art. I. — S. M. le Roi de Sardaigne met à la disposition des Hautes Puissances Alliées la partie de la Savoie qui se trouve entre la rivière d'Arve, le Rhône, les limites de la partie de la Savoie occupée par la France, et la montagne de Salève jusqu'à Veiry inclusivement; plus celle qui se trouve compris entre la grande route du Simplon, le lac de Genève et le territoire actuel du Canton de Genève; depuis Vézenas, jusqu'à point où la rivière d'Hermance traverse la susdite route, et de là, continuant le cours de cette rivière, jusqu'à son embouchure dans le lac de Genève, au levant du village d'Hermance (la totalité de la route du Simplon continuant à être possédée par S. M. le Roi de Sardaigne), pour que ces pays soient réunis au Canton de Genève, sauf à déterminer plus précisément la limite par des Commissaires respectifs, surtout pour ce qui concerne la délimitation en dessus de Veiry, et sur la montagne de Salève. Dans tous les lieux et territoires compris dans cette démarcation, S. M. renonce, pour Elle et ses successeurs à perpétuité, à tous droits de souveraineté et autres qui peuvent lui appartenir, sans exceptions ni réserves.

Art. II. — S. M. accorde la communication entre le Canton de Genève et le Valais, par la route dite du Simplon, de la même manière que la France l'a accordée entre Genève et le pays de Vaud, par la route qui passe par Versoy. S. M. accorde de même, en tout temps, une communication libre pour les milices Genevoises, entre le territoire de Genève et le mandement de Jussy, et les facilités qui pourraient être nécessaires à l'occasion pour revenir par le lac à la susdite route du Simplon.

At the Second Peace of Paris, however, terms more liberal to Geneva were agreed upon and an actual grant of the French territory lying

between Cantons Geneva and Vaud was provided, together with cessions of Sardinian territory lying between the Genevan *exclaves* and also the promise of a Sardinian tariff-free zone. These provisions were incorporated in a preliminary protocol and afterwards made part of the identical treaties known collectively as the Second Peace:

Extrait du Protocole des Plénipotentiaires de Grande-Bretagne, de Prusse et de Russie, en date du 3 novembre 1815

Versoix, avec la partie du pays de Gex, qui sera cédée par la France, sera réuni à la Suisse pour faire partie du Canton de Genève. La commune de Saint-Julien; de la partie française de la Savoie, sera également réunie au Canton de Genève.

Pour faire participer S. M. le Roi de Sardaigne dans une juste proportion aux avantages qui résultent des arrangements présents avec la France, il est convenu que la partie de la Savoie qui était restée à la France en vertu du traité de Paris du 30 mai 1814 sera réunie aux États de Sa Majesté, à l'exception de la commune de Saint-Julien qui sera remise au Canton de Genève.

Les Cabinets de Cours réunies emploieront leurs bons offices pour disposer S. M. Sarde à céder au Canton de Genève les communes de Chesne, Thonex et quelques autres nécessaires pour désenclaver le territoire suisse de Jussy, contre la rétrocession de la part du Canton de Genève, du territoire situé entre la route d'Évian et le lac, qui avait été cédé par S. M. Sarde dans l'acte du 29 mars, 1815.

Le Gouvernement Français ayant consenti à reculer ses lignes de douane des frontières de la Suisse du côté du Jura, les Cabinets des Cours réunies emploieront leurs bons offices pour engager S. M. Sarde à les faire reculer également du côté de la Savoie, au moins au delà d'une lieue de la frontière suisse et au dehors des Voirons, de Salève et des Monts de Sion et de Vuache.

The clause in the foregoing protocol touching the cession of part of the district of Gex reappears slightly changed in the identical treaty of November 20th and now provides expressly for retirement of the French customs line to the west of the Jura mountains, thus making all of Gex a tariff-free zone:

Pour établir une communication directe entre le Canton de Genève et la Suisse, la partie du pays de Gex, bornée à l'est par le lac Léman, au midi par le territoire du Canton de Genève, au nord par celui du Canton de Vaud, à l'ouest par le cours de la Versoix et par une ligne

qui renferme les communes de Collex-Bossy et Meyrin en laissant la commune de Ferney à la France sera cédée à la Confédération Helvétique, pour être réunie au Canton de Genève. La ligne des douanes françaises sera placée à l'ouest du Jura, de manière que tout le pays de Gex se trouve hors de cette ligne.

It was not, however, until the Turin Treaty of March 16th in the following year that the remaining Genevan *exclave* of Jussy in Upper Savoy was territorially united with Geneva by cession of the intervening country; it was also in this treaty that De Rochemont finally obtained the actual concession of a Savoyard tariff-free zone destined to be equally advantageous to Sardinia and Geneva. Article 3 of the treaty indicates the territorial extent of the zone which is to be free from collection of customs duties touching which the treaty provides that:

Aucun service ne pourra être fait ni sur le lac, ni dans la zone, qui sépare du territoire de Genève la ligne ci-dessus indiquée: il sera néanmoins loisible; en tout temps, aux autorités administratives de S. M. de prendre les mesures qu'elles jugeront convenables contre les dépôts et le stationnement des marchandises dans ladite zone, afin d'empêcher toute contrebande qui pourrait en résulter. Le Gouvernement de Genève de son côté, voulant seconder les vues de S. M. à cet égard, prendra les précautions nécessaires pour que la contrebande ne puisse être favorisée par les habitants du Canton.

Art. IV. — La sortie de toutes les denrées du Duché de Savoie, destinées à la consommation de la ville de Genève et du Canton, sera libre en tout temps, et ne pourra être assujettie à aucun droit; sauf les mesures générales d'administration, par lesquelles S. M. jugerait à propos, en cas de disette, d'en défendre l'exportation de ses États de Savoie et de Piémont.

Savoy having come into French possession by the treaty of March 24, 1860, the Imperial Government announced that it would, in conformity with a plebiscite, proceed to establish a tariff-free zone in northern Savoy upon the plan already existent in the district of Gex. This was done, the zone area being thus greatly widened, and the practice of commercial reciprocity between Switzerland and France, long previously recognized as to Savoy and expressly consecrated in the Treaty of St. Julien, July 16, 1603, and in that of Turin, June 3, 1754, became a part of the established order along the extensive fron-

tier lines from which customs services had been withdrawn to the distant political frontiers, where the main chain of the high Alps looks down upon the valley of the Rhone and the plain of the Po.

The tradition and practice of reciprocity in the district of Gex stretched back over some two centuries, as in the case of Savoy. Its character is admirably indicated in an edict of the French Crown bearing date December 22, 1775, and whose clarity of expression would lose much in an English translation:

Louis, par la Grâce de Dieu, roi de France et de Navarre, à tous ceux qui ces présentes lettres verront, salut :

Nous nous sommes faits rendre compte des représentations, faites en différents temps, au feu roi, notre très honoré seigneur et aïeul et à nous-même, depuis notre avènement au trône, par les gens des trois états de notre pays de Gex, portant que la perception des droits d'entrée et de sortie, qui ont lieu dans les provinces, sujettes aux droits de nos cinq grosses fermes, ainsi que la régie et la vente exclusive du sel et du tabac, devenaient de jour en jour plus difficiles dans ce pays, par sa position qui se trouve enclavée entre les terres de Genève, de la Suisse et de la Savoie, et séparée des autres provinces de notre Royaume par le Mont Jura; que ces droits, d'ailleurs, ne pouvaient qu'être fort onéreux aux habitants de notre dit pays de Gex, en les privant des avantages, que devait naturellement leur procurer cette situation. Nous avons cru qu'il était digne de notre bonté, de venir à leur secours, par la suppression tant des droits de traite, qui sont établis sur les marchandises, qui entrent dans le dit pays ou qui en sortent pour passer à l'étranger, que du privilège de la vente à notre profit du sel et du tabac, à la charge néanmoins de l'indemnité, qui nous sera due ou à l'adjudicataire de nos fermes pour raison de ces suppressions, ainsi que de la manière, qu'elle sera par nous ordonnée, conformément au désir que nous en ont témoigné les gens des trois États de notre pays de Gex. A ces causes et autres à ce nous mouvant, de l'avis de notre Conseil et de notre certaine science, pleine puissance et autorité Royale, nous avons dit, déclaré et ordonné par ces présentes, signées de notre main, disons, déclarons et ordonnons, voulons et nous plaît ce qui suit:

Article premier. — Voulons qu'à l'avenir et à commencer du premier janvier prochain, notre dit pays de Gex soit réputé, comme nous le réputons par ces présentes "pays étranger," quant aux droits de nos fermes générales et comme tel exempt des droits d'entrée et de sortie, établis par l'édit du mois de septembre 1664 et le tarif du 18 du dit mois y annexé, sur les marchandises et denrées, que les habitants de ce pays emportent à l'étranger, et sur celles, qu'ils entreront directement et sans emprunter le passage des provinces des cinq grosses fermes; en conséquence, nous ordonnons que tous les bureaux des traites et autres,

établis tant sur les frontières dudit pays de Gex, limitrophes aux terres de Genève, de la Suisse et de la Savoie, que dans l'intérieur dudit pays, seront et demeureront supprimés à partir dudit jour 1er janvier prochain.

We come, finally, to the extension of Swiss *neutrality* beyond the original borders of the country. This was accomplished, in the first place, through annexation of the wide-lying possessions of the Prince-Bishop of Basel-Pruntrut. The episcopal territory was wholly distinct from the Swiss *Canton* Basel, whose capital had been a free city of the Empire and served during a long period as the residence of the Bishop, although this residence had been removed to Pruntrut (Porrentruy) at the Protestant Reformation. The Bishop's own territories consisted of two portions in a political sense, the one lying along the frontier of Canton Basel, being an ally (*zugewandter Ort*) of the Confederation, and the remaining portion of the Bishopric being included in the old imperial circle of the upper Rhine. In 1793 the entire territory was annexed to France, and in 1803 a tiny portion lying north of Basel city and on the right bank of the Rhine was handed over to the Grand Duchy of Baden to which it belongs today. In assigning the rest of the Bishopric to Switzerland at Vienna, the Congress incorporated the larger part of it with Canton Bern, a small portion being given to Neuchâtel and another fragment to Canton Basel. These various steps were aimed at the military strengthening of Switzerland's westerly and northwesterly frontiers; on the south and east of the Confederation a similar object was sought to be attained, though in the first instance at the express request of Sardinia, through the extension of Swiss neutralization over upper Savoy, which had long been in a more or less defenseless condition through the removal of the royal capital from Chambéry to Turin on the south side of the Alps. Accordingly, when the Powers, on March 20, 1815, had agreed to the recognition and guarantee of Swiss permanent neutrality within that country's new frontiers, the Sardinian envoy, De Saint-Marsan, obtained the assent of the Powers to a memorial, formally approved by the Swiss Diet, August 12, 1815, agreeing to extend the theretofore recognized permanent neutrality to the more northerly portion of upper Savoy; while at the Second Congress of Paris the Powers, when providing for the demolition of the fortifications of Hüningen just north of Basel

city, added a clause to the identical treaty of November 20, 1815, in which the Swiss-Savoyard neutrality was further expanded to comprise southerly upper Savoy, that is to say, the three ancient districts of Chablais, Faucigny, and Genevois, now the *arrondissements* of Thonon, Bonneville, and St.-Julien, all became clothed with the neutral quality, thus interposing a neutral zone between Switzerland and any neighbor on the south and east of Geneva and the lake. The precaution had been taken in the memorial of March 29, 1815, to stipulate that whenever states adjoining the Swiss borders should find themselves in a condition of imminent or open hostility, any Sardinian troops then in these neutralized districts should be allowed to retire along the Simplon road to Italy through Canton Valais, nor should any armed troops of any Power be allowed to occupy or traverse the neutral territory without Swiss permission. The Swiss Government, then, and no other may rightfully garrison this Savoy country in time of warfare. Switzerland's military frontier on the Savoy side is thus practically extended by treaty and international guarantee to the line of the high Alps.

Switzerland, then, along the borders of Canton Geneva and the easterly line of the lake finds itself encircled by foreign territory whose customs frontiers have been removed to an extent sufficient to allow international reciprocity with an extensive stretch of country. The portion of this country comprised in the district of Gex on the north of the lake, while tariff-free, is not neutralized, but the tariff-free zones of the Savoyard country, together with the still wider area to the south of the tariff-free zones, are included in the shelter of Swiss neutralization. It should be added that precise details touching the practical maintenance and execution of the reciprocity thus divided are regulated by a treaty made with France in 1881 and by a federal ordinance of the Swiss Government passed in 1908, to which is attached an official map indicating the tariff-free zones.

We should note, also, that the question has long been mooted as to the true character, in the light of international law, of the responsibility undertaken by the Allies at Vienna and at the Second Peace of Paris with respect to a protecting rôle touching the Swiss commonwealth which they undoubtedly assumed on both occasions and which

at the Second Peace of Paris, as has been already indicated, was given definite form in the celebrated declaration signed by Austria, France, Great Britain, Portugal, Prussia, and Russia. Eminent authorities have sharply differed touching the existence of an actual *guarantee* of Swiss and Savoyard neutrality, since the declaration undertakes to *recognize* Swiss perpetual neutrality, but *guarantees* the integrity and the inviolability only of its territory. There would appear, nevertheless, to be no doubt whatever as to the intention of the Powers at the Vienna Congress: it is expressly stated in the declaration of March 20, 1815, that an Act shall be drawn up recognizing and guaranteeing on the part of all the Powers Swiss perpetual neutrality; in the Sardinian memorial of March 26th Saint-Marsan asks for an extension of Swiss neutrality over Savoy as *guaranteed* by the Powers; in Article 92 of the Vienna Final Act this stipulation of the memorial takes shape in a clause stating that certain portions of upper Savoy shall be comprised within Swiss neutrality as recognized and guaranteed by the Powers; the protocol of November 3, 1815, declares also, when widening the sphere of Swiss neutrality in Savoy, that such widening shall extend the neutrality in the same manner as provided by Article 92 of the Vienna Final Act; and this provision was ratified by the Sardinian Government in its *acte de remise* of December 15, 1815; while in Article VII of the Sardinian treaty of March 16, 1816, which recapitulated the various provisions touching the extension of Swiss neutrality over Savoy, the terms "recognize" and "guarantee" are carefully quoted from the Second Peace of Paris in explanation of Savoy's claim to neutralization.

There would appear, indeed, no doubt that it was an express guarantee which was both contemplated and actually declared at Vienna. This was required by the circumstances amid which the various transactions above enumerated were brought to a successful diplomatic conclusion.

Whether, in fact, we regard Swiss neutrality as a measure in its origin adopted as a refuge from the perils of attack from surrounding and powerful neighbors, or as a policy in part urged upon the country from without in order to secure to possible belligerents the advantages of what might be termed a safety-zone, all will admit that it has con-

sistently served to develop a conception of devotion to country and also to expand civil freedom at home unstained by ambition of conquest abroad. Handed down, as it has been, through the centuries and protected in a later time by such safeguards as solemnly executed treaties and the principles of international law may throw about it, Swiss permanent neutrality may well be looked upon as a by no means insignificant element in the structure of modern world-civilization, while its preservation is essential as a bright example to the progress and perpetuation of that civilization itself.

There remains for consideration the maintenance by Switzerland of its neutrality during the European war, together with, in conclusion, the general aspects of permanent neutrality as attempted to be developed or preserved elsewhere.

GORDON E. SHERMAN.

CHANGE OF SOVEREIGNTY AND PRIVATE OWNERSHIP OF LAND

I. THEORIES AND METHOD OF TREATMENT

PERHAPS no part of international law gives rise to more uncertainty and disagreement than the law which determines the resulting rights and duties of states and individuals upon a change of sovereignty, — the so-called law of succession. One group of writers holds that the new sovereign succeeds to *all* the rights and obligations of the former sovereign with respect to the territory ceded. The new sovereign, it is said, like the Roman heir, is “universal successor” to the obligations as well as to the rights of the former sovereign. Grotius suggests the analogy of the Roman heir when he says: “*Heredis personam, quoad domini tam publici quam privati continuationem, pro eadem censi cum defuncti persona, certi est juris*” (Book II, Chap. IX, sec. 12). Again, he says: “*Potest imperium victoria acquiri, ut est in rege alio imperante, et tunc in ejus jus succeditur*” (Book III, Chap. VIII, sec. 2). This analogy, suggested by Grotius when international law was in the making, has had a remarkably strong influence upon the development of the rules of international law governing a change of sovereignty. Many writers of authority, following in the footsteps of Grotius, have laid it down that the new sovereign succeeds to all the obligations as well as to the rights of the former sovereign.¹

¹ Halleck in his *International Law* (4th ed.), Vol. II, Chap. 34, sec. 27, p. 530, says: “Complete conquest, by whatever mode it may be perfected, carries with it all the rights of the former government; or, in other words, the conqueror by the completion of his conquest, becomes, as it were, the heir and universal successor of the defunct or extinguished state.” Hall in his *International Law* (5th ed.), p. 99, says: “When a state ceases to exist by absorption in another state, the latter in the same way is the inheritor of all local rights, obligations, and property.” Speaking of the case of a territory which has won its independence, he says (p. 92): “Rights possessed in respect of the lost territory, including . . . obligations contracted with

Other writers, however, adopting the opposite extreme, declare that the new sovereign succeeds to *none* of the obligations resting upon the former sovereign. For instance, Keith, who made an exhaustive examination of the subject of succession as laid down in treaties, by text-writers, and in current practice, says:

It is submitted that cession, in itself, creates only a singular succession, that is a succession to rights and not to liabilities. . . . In any case in which the terms of the contract are not explicit the principle on which the question should be judged is that of a succession to rights and not to liabilities. Such a succession is really merely a substitution without any continuity. . . . It is submitted that the true doctrine of international law with regard to the annexation of states is that the annexing Power seizes all the rights in the country and its material resources, but it does not succeed to the obligations of the conquered government nor to such rights as were personal to that government.²

Between these two extremes of succession to *all* obligations, and succession to *no* obligations, there are adherents of almost every conceivable theory. But if the theorists and text-writers are irreconcilable in the various and diverse shades of opinion expressed, the practices of states are if possible even more so.

The subject of succession covers such widely differing phases, and these are dependent upon such diverse considerations and principles,

reference to it alone, and property which is within it, and has therefore a local character, transfer themselves to the new state person." To the same effect Rivier in his *Principes du Droit des Gens*, Vol. I, p. 70, says: "Le successeur continue la personnalité économique et fiscale de l'État supprimé, avec ses avantages et ses charges, spécialement avec celle de la dette publique, en conformité des règles connues: 'Bona non intelliguntur nisi deducto aere alieno' et 'Res transit cum suo onere.'" F. de Martens in his *Traité de Droit International* (translation by Leo), Vol. I, sec. 67, p. 368, says: "Les conséquences juridiques de l'absorption d'un État par un autre État rappellent les relations qui naissent entre particuliers à l'occasion de l'ouverture d'une succession. L'État qui s'est annexé le territoire d'un autre pays prend la place du défunt et lui succède complètement comme personne juridique. Il hérite de ses droits et de ses obligations." To the same effect are Despagnet, *Droit International Public*, No. 90; Bluntschli, *Droit International*, sec. 54; Heffter, *Le Droit International*, sec. 25, and many others.

² Keith, *Theory of State Succession*, pp. 5, 6. Compare Appleton, *Des effets des annexions de territoires*; Gabba, *Questioni di diritto civile*; and Gidel, *Des effets de l'annexion sur les concessions*.

that nothing but confusion can result from the not uncommon method of treating them all as one homogeneous mass to be forced within the confines of a single rule. The general subject, it is submitted, should be divided under the different principles involved, and each one of these developed separately. One great branch falls under the general principle that change of sovereignty shall work no interference with private property rights. This principle has been well established by innumerable court decisions. It was first evolved to express the idea that a succession to another state's *imperium* involved no succession to the *dominium* of privately owned property. From its form as first laid down, the rule has been much extended and broadened; so that today it contains the further idea that all individual rights which constitute "property" shall be protected from confiscation through mere cession. In cases arising under this principle any distinction between "universal" and "partial" succession, or between cession and conquest, would seem useless and immaterial, productive of unnecessary confusion and complexity, and indefensible in theory.³ In this branch of the subject, strictly speaking, there is no question of true succession at all; there is no stepping into the shoes of one nation by another, no question of a receiving state succeeding to the obligations and rights of a ceding state. It is simply a question, often attended with considerable difficulty, of the application of the rule that upon the event of cession private property shall not be confiscated.

Under this branch of the law of succession will fall the discussion to which this paper will be confined,⁴ of the effect of a change of sovereignty upon private rights in land within the ceded territory. Such a discussion will have nothing to do with a second branch which con-

³ For an interesting statement to the effect that any distinction in this branch of the law between universal and partial succession, or between cession and conquest is indefensible, see an article by Pierre Descamps in 15 *Revue Générale de Droit International Public*, pp. 396, 397. Compare also the statement of the Transvaal Concessions Commission: "In considering what the attitude of the conqueror should be towards such concessions, we were unable to perceive any sound distinction between a case where a state acquires part of another state by cession and a case where it acquires the whole by annexation." Report of Transvaal Concessions Commission, British Parliamentary Papers, 1901, So. Africa, Cd. 623.

⁴ A subsequent paper will deal with the effect of a change of sovereignty upon concessions and franchises.

cerns the principle of one state's succeeding by derivative title to another state's rights and, perhaps, its obligations, — a principle which becomes of prime importance in the consideration of contracts and concessions.⁵ A third branch of the law of succession concerns the effect of a change of sovereignty upon the municipal law of the territory ceded. A fourth branch deals with the effect produced upon the allegiance of the inhabitants of the territory ceded. Any attempt to deal with all these matters under the same general rules and principles can not but have the effect which always follows from trying to force a diversified subject, complex by its very nature, under too simple and too sweeping generalizations. The necessarily inevitable result is to exclude from consideration factors which are really material, and hence to evolve a law which makes "hard cases."

In a subject marked by such diversity of theory and practice as is succession it is not satisfying to seek the law by examination and quotation from the writers of text-books and treatises. When the doctors disagree, their opinions are not always convincing. Treaties give no better indication of the true law; most of them, one must confess, result from considerations of present expediency rather than of enduring principle. With the frank recognition of the hopelessness, therefore, of reconciling essentially irreconcilable theories and practice, it has seemed fair to examine, not past international practice and former treatises, but the actual cases which have come up for judicial or executive decision within a single country, and to construct from these, if possible, a consistent body of law upon the particular topic under consideration. Such a body of law will, of course, amount to nothing more than the conception of international law held by a single state and, as such, will not prove what international law is. Yet at least it will serve to shed light upon a much confused subject and will help to bring out important and interesting distinctions; and if the law

⁵ It would, indeed, be possible to crowd land cases also under this second principle by viewing the state's duty of respecting private *dominium* and protecting individual owners in their rights of ownership as an obligation incident to the *imperium* of the ceding state to which the receiving state succeeds. But, it is submitted, the land cases can be considered with far greater clearness under the general principle first suggested; nothing can be gained by a view that seems at once awkward and artificial, as well as needlessly involved.

thus arrived at by induction from actual cases proves not inconsistent with the law of other leading countries, it may go far toward pointing out actual international law.⁶

II. THE GENERAL RULE

The principle that cession works no impairment of private property rights has nowhere been more clearly enunciated than in the United States. It has been again and again reiterated by innumerable court decisions, by frequent treaty provisions, by many official rulings and public declarations. The questions which must be settled under this branch of the subject are twofold, *i.e.*: (1) Had the claimant at the time of cession or conquest a judicially enforceable interest? (2) Does the interest in question constitute "property"?

In frequent adjudications upon land claims in ceded territory the United States is peculiarly rich. Most of these naturally involve only the first of the two foregoing questions; if the claimant can establish that he held before the cession a judicially enforceable interest in land, there is usually little question but that such an interest constitutes "property."

The classic case which has been quoted and followed universally until it has become a famous landmark in this part of the law is *United States v. Percheman*, 7 Peters 51, decided in the United States Supreme Court by Chief Justice Marshall in 1833. In that case the plaintiff claimed 2000 acres of land in Florida under a grant made by the Spanish Governor in 1815 while Florida was still under Spanish dominion. After the cession of Florida by Spain to the United States in 1819, the plaintiff's claim to the tract of land was rejected by the United States commissioners appointed to settle land claims in the territory of Florida. The plaintiff thereupon appealed to the United States courts; and Chief Justice Marshall, in deciding in favor of the plaintiff, laid down the law upon this subject in classic passages which have been quoted by courts and text-writers ever since.

⁶ The law of the United States has been selected for this examination, partly because United States decisions of themselves carry influence, but chiefly because it contains more precedents and decisions upon the subject than the law of any other country.

It is very unusual even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated; that sense of justice and of right which is acknowledged and felt by the whole civilized world would be outraged, if private property should be generally confiscated, and private rights annulled. The people change their allegiance; their relation to their ancient sovereign is dissolved; but their relations to each other, and their rights of property, remain undisturbed. If this be the modern rule even in cases of conquest, who can doubt its application to the case of an amicable cession of territory? Had Florida changed its sovereign by an act containing no stipulation respecting the property of individuals, the right of property in all those who became subjects or citizens of the new government would have been unaffected by the change. It would have remained the same as under the ancient sovereign. . . . A cession of territory is never understood to be a cession of the property belonging to its inhabitants. . . . The cession of a territory by its name from one sovereign to another . . . would be necessarily understood to pass the sovereignty only, and not to interfere with private property.⁷

The rule as laid down in *United States v. Percheman* was merely the restatement of an already well settled doctrine, which had previously been announced by the United States Supreme Court on several occasions.⁸ It was approved and followed in a long list of

⁷ The same rule was expressed in the case of *Mitchel v. United States* (1835), 9 Peters 711, at 733, where the court laid down as definitely settled and established by the United States Supreme Court "that by the law of nations, the inhabitants, citizens or subjects of a conquered or ceded country, territory or province, retain all the rights of property which have not been taken from them by the orders of the conqueror, or the laws of the sovereign who acquires it by cession. . . . That a treaty of cession was a deed or grant by one sovereign to another, which transferred nothing to which he had no right of property, and only such right as he owned and could convey to the grantee." In *Leitensdorfer v. Webb* (1857), 20 Howard 176, the court said: "This is the principle of the law of nations, as expounded by the highest authorities. In the case of the *Fama*, in the 5th of Robinson's Rep. p. 106, Sir William Scott declares it to be 'the settled principle of the law of nations, that the inhabitants of a conquered territory change their allegiance, and their relation to their former sovereign is dissolved; but their relations to each other, and their rights of property not taken from them by the orders of the conqueror, remain undisturbed.' So, too, it is laid down by Vattel, book 3d, cap. 13, sec. 200, that 'the conqueror lays his hands on the possessions of the state, whilst private persons are permitted to retain theirs; they suffer but indirectly by the war, and to them the result is, that they only change masters.'"

⁸ See, for instance, *Mutual Assurance Soc. v. Watts* (1816), 1 Wheaton 279.

cases, and stands today as an authoritative principle unquestioned by the courts.⁹

The same principle has been adhered to by the United States in its treaty provisions no less uniformly than in its court decisions;¹⁰ and the treaty provisions embodying this rule have uniformly been held to be merely declaratory of international law. "In the treaty by which Louisiana was acquired," said Chief Justice Marshall, "the United States stipulated that the inhabitants of the ceded territory should be protected in the free enjoyment of their property. The United States, as a just nation, regard this stipulation as the avowal of a principle which would have been held equally sacred, though it had not been inserted in the contract."¹¹

⁹ Some of the cases citing and following the rule of the *Percheman* case are: *Delassus v. United States*, 9 Peters 117, 188; *Strother v. Lucas*, 12 Peters 410; *Pollard v. Kibbe*, 14 Peters 375; *United States v. Hanson*, 16 Peters 196; *United States v. Clarke*, 16 Peters 232; *United States v. Acosta*, 1 Howard 24; *United States v. Power*, 11 Howard 570; *Jones v. McMasters*, 20 Howard 20; *Leitensdorfer v. Webb*, 20 Howard 177; *United States v. Anguisola*, 1 Wall. 352; *Langdeau v. Hanes*, 21 Wall. 527; *Airhart v. Massieu*, 98 U. S. 496; *Coffee v. Groover*, 123 U. S. 10; *More v. Steinbach*, 127 U. S. 70; *Knight v. United States Land Ass'n.*, 142 U. S. 184; *United States v. Chaves*, 159 U. S. 457; *Cessna v. United States*, 169 U. S. 165; *Ely's Adm. v. United States*, 171 U. S. 220, 223; *Ainsa v. N. M. & A. R. R.*, 175 U. S. 79; *The John II Estate v. Brown*, 235 U. S. 349; *Coburn v. United States*, 75 Fed. 528 (Cal.); *Smyth v. New Orleans Canal & Banking Co.*, 93 Fed. 921; *In re Chavey*, 149 Fed. 75; *Hall v. Root*, 19 Ala. 386; *Reynolds v. West*, 1 Cal. 326; *Vanderslice v. Hanks*, 3 Cal. 38; *Ferris v. Coover*, 10 Cal. 619; *Teschemacher v. Thompson*, 18 Cal. 22; *Leese v. Clark*, 20 Cal. 421; *Minturn v. Brower*, 20 Cal. 660, 662; *MaGee v. Doe*, 9 Fla. 392, 395; *May v. Specht*, 1 Mich. 189; *Sanborn v. Vance*, 69 Mich. 226; *Roussin v. Parks*, 8 Mo. 539; *Charlotte v. Chouteau*, 25 Mo. 479; *United States v. Lucero*, 1 N. M. 429, 447; *Claves v. Whitney*, 4 N. M. 181; *Catron v. Laughlin*, 11 N. M. 630; *Hardy v. De Leon*, 5 Tex. 234; *Corrigan v. State*, 42 Texas Civ. 178.

¹⁰ The following important treaties made by the United States all contain provisions based on this same general rule: Treaty of peace with Great Britain (1783), Arts. V and VI; Treaty with France for cession of Louisiana (1803), Art. III; Treaty with Spain for cession of Florida (1819), Art. VIII; Treaty of Guadalupe Hidalgo with Mexico (1848), Art. VIII; Gadsden Treaty with Mexico (1848), Arts. V and VI; Treaty with Russia for cession of Alaska (1867), Art. III; Treaty of Paris with Spain (1898), Art. IX.

¹¹ *United States v. Soulard*, 4 Peters 511.

"Independent of treaty stipulation this right [property] would be held sacred. . . . The people change their sovereign; their right to property remains unaffected

Where there has been a definite vesting of title in the claimant before the treaty of cession, the clear and undisputed principle laid down in *United States v. Percheman* and followed by a long unbroken course of decisions is compelling.¹² It is often true, however, that courts abuse the rule by stating it in the form of such sweeping generalizations as would include cases that the rule was never designed to cover.¹³ Often the language used is so extreme as to be actually misleading; and in view of many such statements and the common expression that change of sovereignty does not divest any rights of property in individuals whether consummated or inchoate, absolute or contingent, one must notice certain classes of cases which must be dis-

by the change." *Delassus v. United States*, 9 Pet. 117, 133. The cession of California to the United States "did not impair the rights of private property. They were consecrated by the law of nations." *United States v. Moreno*, 1 Wall. 400, 404.

Similarly, legislative recognitions of the binding force of the international law of succession in determining the validity of land titles in ceded territory have been accorded by the Congress of the United States. See, for instance, the Act of 1824, providing for a court trial "to settle and determine the question of the validity of title according to the law of nations, the stipulations of any treaty," etc. 4 Stat. 53, c. 173, section 2.

For official and diplomatic declarations of the general principle, see 1 Moore's Digest, section 99.

¹² Even though the claimant may have had a valid legal title at the time of cession, the treaty may of course expressly provide for the recognition of private property rights only upon certain conditions; or such property rights may be later lost through long disuse or abandonment. See *United States v. Repentigny*, 5 Wall. 211.

¹³ See, for instance, *Strother v. Lucas*, 12 Peters 410, 435, where the court laid it down that "this court has defined property to be any right, legal or equitable, inceptive, inchoate, or perfect, which, before the treaty with France in 1803, or with Spain in 1819, had so attached to any piece or tract of land, great or small, as to affect the conscience of the former sovereign 'with a trust,' and make him a trustee for an individual, according to the law of nations, of the sovereign himself, the local usage or custom of the colony or district; according to the principles of justice and rules of equity." The court further asserted that "the term 'grant,' in a treaty, comprehends not only those which are made in form, but also any concession, warrant, order, or permission to survey, possess or settle, whether evidenced by writing or parol or presumed from possession." A very common statement of the rule is found in *Hornsby v. United States*, 10 Wall. 224, 242, where it was said that "by the term 'property,' as applied to lands, all titles are embraced, legal or equitable, perfect or imperfect."

tinguished from those falling under the general rule. These may be roughly divided into the following four groups: (a) inchoate grants, *i.e.*, where no legal title has vested; (b) grants on condition; (c) indefinite grants; (d) void grants.

III. INCHOATE GRANTS

Perhaps the first class of cases gives rise to most difficulty. In the early days of the country, when great tracts of the new Louisiana territory were being won by pioneer settlers who often had to place more reliance upon their muskets than upon legal rules and titles, nothing was more common than to hold land without recorded legal title. The settlers were for the most part too ignorant or too poor to defray the court expenses incident to completing their titles; and consequently the greater part of the new territory was held by mere possession without legal title of any kind. To eject or disregard the titles of all those who by their toil and daring had given to the land its value would have been a mockery of justice; and accordingly the United States courts after the cession of Louisiana to the United States found little difficulty in confirming such grants where the claimants, or those from whom they derived their claims, had been in continuous possession of defined tracts of land and only bare legal title was lacking.¹⁴

¹⁴ In *Landes v. Perkins*, 12 Mo. 238, the court, speaking of land in the city of St. Louis which had originally constituted part of the territory of Louisiana, said: "It is a matter of history, of which this court will take judicial notice, that, at the time of the cession of Louisiana to the United States, in that portion of the territory of which this State is composed, nineteen-twentieths of the titles to lands were like that involved in this case prior to its confirmation. There were very few complete grants. Most of the inhabitants were too poor to defray the expenses attending the completion of their titles, but they had faith in their government and rested as quietly under their inchoate titles as though they had been perfect. As early as October, 1804, we find the legislature speaking of freeholders and authorizing executions against lands and tenements. There being so few complete titles, the legislatures, in subjecting lands and tenements generally to execution, must have contemplated a seizure and sale of those incomplete titles which existed under the Spanish Government. At the date of the act above referred to, no titles had been confirmed by the United States. An instance is not recollected in which a question has been made as to the liability of such titles as Clamorgan's under the Spanish Government to sale under execution. It is believed that such titles have been made the subject of judicial sales without question ever since the change of government."

Had the claimants cared to enter the Spanish or French courts before the cession, the courts could not have refused to grant to them perfect legal titles; it therefore seemed logical as well as just for the United States courts to hold that, after the cession of Louisiana to the United States, they held equitable interests *in rem* which constituted real property rights, and, as such, must be respected by United States courts.

Essentially the same situation existed in regard to many tracts of land granted without the necessary legal formalities or patenting of title, by early Spanish or French provincial officials or commanders of military posts in return for services rendered or as prizes for their favored friends.¹⁶ After the cession of Louisiana to the United States had taken place it then became the problem of the United States courts — and often a very difficult one — to determine whether such “incomplete” concessions lacked merely a bare legal title or substantial validity, — whether or not the claimants could have completed their title by right and not by grace.

The rule, therefore, became well settled that mere absence of legal title before cession would not of itself prevent the claimant from asserting in the courts of the receiving state a judicially enforceable property right. But, on the other hand, it is equally clear that mere expectations of future interests will not be protected after cession. The question to be ascertained in each case is: Did the claimant hold before the cession a judicially enforceable right *in rem*, *i.e.*, either legal title or equitable ownership of a real interest? Although many of the books lay it down in loose language that the cession of sovereignty makes no alteration in private property, whether the right is vested or contingent or merely expectant, yet, it is submitted, mere future expectations and

¹⁶ As Chief Justice Marshall said in *Soulard v. United States*, 4 Pet. 512: “When Louisiana was transferred to the United States, very few titles to lands, in the upper part of that province especially, were complete. The practice seems to have prevailed, for the deputy-governor, sometimes the commandants of posts, to place individuals in possession of small tracts, and to protect that possession, without further proceeding. Any intrusion on this possession produced a complaint to the immediate supervising officer of the district or post, who inquired into it, and adjusted the dispute. The people seem to have remained contented with this condition. The colonial government, for some time previous to the cession, appears to have been without funds, and to have been in the habit of remunerating services with land instead of money. Many of these concessions remained incomplete.”

many contingent rights *will* be lost by the change in sovereignty, if before the cession no property right or interest *in rem* has vested in the claimant.¹⁶ Where the claimant had already taken the first steps for the acquisition of title, for instance, but held no legal title at the time of cession, the question would be whether he could of right and not by grace, under the municipal law prevailing before the cession, have completed his ownership as against the holder of the legal title. Of course, since no subject can compel his sovereign to come into court, in a case where the claim of ownership is being made against a sovereign state, the claim "of right" must be understood to mean a claim which, except for the sovereign's general immunity from suit, could be judicially enforced against him. As Chief Justice Marshall said in *Soulard v. United States*, one must "distinguish between claims founded on legitimate contracts with those authorized to make them on the part of the crown or its immediate agents, and such as were

¹⁶ As to what constitutes a "future expectation," the following words, though used in a slightly different connection, are somewhat illuminating: "Dans le domaine de l'avenir, à côté des intérêts, on rencontre la sphère des *expectatives*. L'expectative n'est pas un simple intérêt d'avenir, une perspective à laquelle s'attache une espérance. Elle ne constitue pas davantage en soi un droit actuellement subsistant. Elle consiste à proprement parler dans un avantage qui n'est pas encore un droit possédé, mais que l'on a l'espoir autorisé de posséder un jour comme droit. Dans l'état actuel de mobilisation des biens matériels, tout le monde peut espérer devenir riche un jour; c'est là malheureusement une simple perspective, une pure espérance. Voici une autre situation. Usant du droit de prescrire, j'ai commencé une prescription. La prescription terminée me donnerait un droit acquis. La prescription commencée me donne une expectative. De même la jouissance d'un héritage auquel je suis appelé en ordre de succession est un avantage auquel je puis juridiquement prétendre sans que j'aie cependant l'assurance de sa future possession. Le jour où mon espoir fondé d'obtenir la succession se réalisera, j'aurai l'avantage de posséder, en droit les biens constitutifs de l'héritage. Présentement, j'ai une expectative, qu'il ne faut pas d'ailleurs confondre avec un droit subordonné à une condition suspensive ou résolutoire: car sa réalisation ne me rendra nullement propriétaire de l'héritage à partir du jour où j'ai eu l'expectative. Si le législateur devait s'arrêter désarmé devant toutes les expectatives, les lois nouvelles pourraient se trouver, sans raison suffisante, paralysées dans d'énormes proportions. C'est pourquoi on admet que l'autorité publique n'est pas liée devant les simples expectatives. Seulement, lorsque ces expectatives ont un caractère particulièrement grave, on voit souvent un sage législateur prendre transitoirement des mesures diverses pour les ménager, bien qu'il n'y soit pas rigoureusement tenu." Descamps, *La Définition des droits acquis*, in 15 *R. G. D. I. P.*, 388.

entirely dependent on the mere pleasure of those who might be in power, — such as might be rejected without giving just cause of imputation against the faith of those in office.”¹⁷

The cases of *United States v. Santa Fé*, 165 U. S. 675, *United States v. Sandoval*, 167 U. S. 278, and *Zia v. United States*, 168 U. S. 198, decided under the Act of March 3, 1891,¹⁸ are all examples of situations where the claimant's interests were of such a contingent or uncertain nature that they could not have been judicially enforced in the courts of the ceding state at the time of cession. The first case involved the claim of the municipality of Santa Fé to the customary four square leagues, measured from the center of the plaza of the town, which were ordinarily granted to municipalities by Spanish officials, but which no records existed to show had been actually granted to the town of Santa Fé. The land in question was also claimed in part by other Spanish adverse grantees as well as by the United States Government which had established a military post within its limits. The second case involved an interest of the same character. In each of these cases, involving difficult determinations as to the nature of the interest concerned, the court came to the conclusion that inasmuch as the claim asserted could not have been judicially enforced in the Mexican courts at the time of cession, it would not be upheld in the United States courts.¹⁹ The case of *Zia v. United States*, 168 U. S. 198, in-

¹⁷ A legislative statement of what is believed to constitute the true rule of international law on this point will be found in the first provision of Sec. 18 of the Act of March 3, 1891, setting up a board of land commissioners to pass upon claims to land in California by virtue of any Spanish or Mexican grant or concession made prior to the acquisition of the territory by the United States. The enactment reads as follows: "First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound, upon the principles of public law, or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect."

¹⁸ For the text of this act, see the preceding note.

¹⁹ In *Ainsa v. United States*, 161 U. S., 208 at 223, the court said: "But under the Act of March 3, 1891, it must appear, in order to the confirmation of a grant

volved the claim of the pueblo of Zia to the valley of the Holy Ghost Spring in New Mexico, the claimants asserting that from the founding of the pueblo they had considered it as their common pasture ground, and that they had been granted express permission to pasture their cattle therein by the Spanish Governor and Captain General in 1766. The United States Supreme Court, however, held that the claimants had acquired no more than a revocable license; and since this could not be enforced against the Mexican Government prior to the cession of the territory to the United States, the claimants held no interest which United States courts would recognize. These cases will be enough, perhaps, to show that a change of sovereignty does sometimes injure contingent interests of property claimants.

On the other hand, a real property right, even though inchoate or merely equitable, will be enforced by the courts of the receiving state. The leading case on this point is *Delassus v. United States* (9 Pet. 117). In this case the claimant's father held a concession of land in Upper Louisiana granted by the Spanish Government in 1795. At the time of the cession of Louisiana to the United States no legal title had passed; yet Chief Justice Marshall, who decided the case in the United States Supreme Court in 1835, confirmed the plaintiff's title to the land, since, as he said, "The concession is unconditional; the land was regularly surveyed, and the party put into possession." Everything had been done before the date of cession to perfect the claimant's concession, which would be binding under the Spanish law; all that was lacking was a bare legal title, which the claimant could have demanded from the Spanish Government as of right. The United States Supreme Court, therefore, held that the plaintiff should not be deprived of his property rights by the fact that at the time of cession he held no legal title. "No principle is better settled in this country," said Chief Justice Marshall, "than that an inchoate title to lands is property."²⁰

by the Court of Private Land Claims, not only that the title was lawfully and regularly derived, but that, if the grant were not complete and perfect, the claimant could, by right and not by grace, have demanded that it should be made perfect by the former government, had the territory not been acquired by the United States."

²⁰ This rule is laid down in many cases. For instance, in *Mitchel v.*

IV. GRANTS ON CONDITION

The second group of cases comprises those of claims to land held under a conditional grant. Here the succeeding government must clearly confirm title where the condition has been performed before cession; as clearly it may refuse to confirm grants where the time for the performance of the condition has expired before the cession, and the condition, whether express or implied, has been unperformed. The case of most difficulty is where at the time of cession the condition has been unperformed but the time allowed for performance has not yet expired. If the claimant in that case perform the condition after cession, may he then demand a confirmation of title from the new sovereign as of right; or may the new sovereign refuse to confirm such titles, on the ground that at the time of cession, the claimant's interest was a mere contingent expectancy? The true rule of law would seem to be that the receiving state should have the right at the time of cession to declare that it will not allow under its jurisdiction and law the further completion of title by the performance of unfulfilled conditions, and will therefore grant titles only to such claimants as are at the time of cession substantially owners of the interest claimed. Where no such declaration is made, however, it would seem that the receiving state should be compelled to perfect the titles of claimants who have in good faith performed after cession the unfulfilled conditions of their grants before the expiration of the time allowed in the condition.

United States, 9 Pet. 711, where the question involved lands granted to the claimants by certain Indians and held without legal title, the court at p. 733 says: "But it must be remembered, that the Acts of Congress submit these claims to our adjudication as a court of equity; and, as often and uniformly construed in its repeated decisions, confer the same jurisdiction over imperfect, inchoate and inceptive titles, as legal and perfect ones, and require us to decide by the same rules on all claims submitted to us, whether legal or equitable. Whether, therefore, the title in the present case partakes of the one character or the other, it remains only for us to inquire, whether that of the petitioner is such, in our opinion, that he has, either by the law of nations, the stipulations of any treaty, the laws, usages and customs of Spain, or the province in which the land is situated, the Acts of Congress or proceedings under them, or a treaty, acquired a right which would have been valid, if the territory had remained under the dominion and in possession of Spain."

Such would seem to be the doctrine acted upon by the United States. In the treaty of Guadalupe Hidalgo between Mexico and the United States in 1848, the United States Government struck out Article 10 as proposed by the commissioners. "That article," says Mr. Justice Brewer in *Cessna v. United States*, 169 U. S. 165 at 186, "not only contemplated binding this government to respect all grants which would have been recognized as valid by the Government of Mexico if no cession had been made, but also proposed to give to grantees who had failed to perform the conditions of their grants, and whose failure to perform might be deemed to have avoided the grants, further time to perform the conditions. By the rejection of this article this government distinctly declared that it did not propose to recognize any grants which were not at the time of the treaty of cession recognized by the Mexican Government as valid or any whose conditions, either precedent or subsequent, had not been fully performed." "In this respect," the court adds, "the action taken was in harmony with the general rule of international law."²¹

The principles governing grants on condition are illustrated by numerous United States decisions, particularly those affecting land granted in Florida by the Spanish Government before 1819. In *United States v. Kingsley*, 12 Pet. 476, a grant in 1816, on condition that the grantee build a mill on the land granted within six months, was refused recognition by the United States Supreme Court in 1838 on the ground that the express condition was never performed. This was followed

²¹ An example of a treaty expressly allowing the fulfillment of unperformed conditions after cession is the treaty of 1819 between Spain and the United States whereby the former ceded to the latter the territories of East and West Florida. Art. VIII of that treaty says:

"All the grants of land made before the 24th of January, 1818, by His Catholic Majesty, or by his lawful authorities, in the said territories ceded by His Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of His Catholic Majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which the said grants shall be null and void."

by a number of similar "mill grant" cases. In *United States v. Wiggins*, 14 Pet. 334, a grant which contained no express condition was refused confirmation by the United States Supreme Court because of the nonperformance of a condition (improvement and settlement) implied in the grant under the general regulations covering land grants laid down by the Spanish governor. On the other hand, where the compliance with the condition amounts to nothing more than a mere formality, the courts will frequently allow the performance of the condition after cession.²²

The United States Supreme Court has gone so far as to suggest that even where the claimant under a conditional grant has failed to perform the conditions contained in the grant, the receiving state should confirm his title if the reason for nonperformance is due to the acts of the ceding or receiving state itself. In the case of *United States v. Arredondo*, 6 Pet. 291, the grant was made upon condition that the grantees should settle and improve the land in three years, upon the failure to perform which the grant should become void, and upon the further condition that they should settle upon it 200 Spanish families; no time was fixed for the performance of the latter condition. The first condition was duly performed within the time set; the second was never performed. Yet the court confirmed title in the grantees, holding that performance of the second condition was excused, because it was rendered probably impossible

²² In *United States v. Clarke*, 19 Pet. 167, the court confirmed a Spanish grant where the survey, which was necessary in order to confirm the Spanish title, had not been made until after the time of cession, the court affirming that "a concession on condition becomes absolute when the condition is performed." This case, however, should be read in the light of Article VIII of the treaty of 1819 between Spain and the United States (quoted in the preceding note). See to the same effect *United States v. Hanson*, 16 Pet. 194, where the court allowed the claimant to have a public survey of his land made after the cession, where the grant was specific and definite, and contained no conditions which had not been performed.

One must be careful to distinguish this group of cases, where a perfectly definite tract of land has been granted, but the public surveyor has not yet fixed the boundary marks at the time of the cession, from the group of cases, to be next considered, where the grant conveys a specific number of acres or quantity of land without defining or fixing the position of the land, and at the time of cession the land has not yet been selected or surveyed.

by the acts of the grantor, the Spanish Government; and certainly immaterial to the United States.²³

V. INDEFINITE GRANTS

The third group of land grant cases comprises those of indefinite grants and grants of a specified number of acres which were never located nor surveyed before cession. The fact that the lands have never been located rather than the fact that they have never been surveyed is the significant feature of these cases. Unlocated grants give the claimants no rights under the succeeding government. In *O'Hara v. United States*, 15 Pet. 274, the court refused to recognize any rights on the part of the claimant on the ground that the original grant, being indefinite in respect to the location and the extent of the grant, was therefore void on account of uncertainty. So in *United States v. Miranda*, 16 Pet. 153, where no order of survey had been made to identify the claimant's tract, and "nothing was done to withdraw the land from the general mass of property, or to show what it was, which was to be withdrawn," the court refused the plaintiff's claim, holding that the original grant was too indefinite to locate the

²³ On p. 744 the court says: "The condition of settling 200 families on the land has not been complied with in fact; the question is, has it been complied with in law, or has such matter been presented to the court as dispenses with the performance, and divests the grant of that condition? It is an acknowledged rule of law, that if a grant be made on a condition subsequent, and its performance become impossible by the act of the grantor, the grant becomes single. We are not prepared to say that the condition of settling 200 Spanish families in an American territory has been, or is, possible; the condition was not unreasonable or unjust, at the time it was imposed; its performance would probably have been deemed a very fair and adequate consideration for the grant, had Florida remained a Spanish province. But to exact its performance, after its cession to the United States, would be demanding the 'summum jus' indeed, and enforcing a forfeiture on principles which, if not forbidden by the common law, would be utterly inconsistent with its spirit. If the case required it, we might feel ourselves, at all events, justified, if not compelled, to declare, that the performance of this condition had become impossible, by the act of the grantors—the transfer of the territory, the change of government, manners, habits, customs, laws, religion, and all the social and political relations of society and of life. . . . Our decree must be in conformity with the principles of justice, which would, in such a case as this, not only forbid a decree of forfeiture, but impel us to give a final decree in favor of the title conferred by the grant."

lands with certainty. "Identity is essential for the latter (*i.e.*, ownership)," says the court at p. 159, "and has uniformly been, . . . when it has confirmed Florida grants inchoate or complete."²⁴ In *Dent v. Emmeger*, 14 Wall. 308, where the claim of the plaintiff in error was "totally undefined and uncertain as regards its outboundaries," the court refused to recognize the claim because of its unenforceability under the Spanish law, the court holding:

Inchoate rights such as those of Cerre were of imperfect obligation and affected only the conscience of the new sovereign. They were not of such a nature (until that sovereign gave them a vitality and efficacy which they did not before possess) that a court of law or equity could recognize or enforce them.

VI. VOID GRANTS

The last type of land grant cases seems clear.

Where the original grant was void for lack of authority in the grantor or lack of ownership in the lands which the grant purported to convey, or for any other reason, the succeeding government will refuse to recognize any rights on the part of the claimants. In *United States v. Reynes*, 9 How. 127, the United States refused to recognize the validity of a grant in Louisiana made by Spain after Spain's cession of Louisiana to France, and before France's cession of the territory to the United States. In *United States v. Sutler*, 21 How. 170, the United States refused to recognize the validity of a grant of land in California made in 1845, before the Treaty of Guadalupe Hidalgo,

²⁴ The general doctrine of the courts in regard to these indefinite land grants is summed up in *United States v. Miranda*, 16 Pet. 153, at p. 160 as follows: "Indeed, the settled doctrine of this court, in respect to these Florida grants, is, that grants for lands embracing a wide extent of country, or within a large area of natural or artificial boundaries, and which granted lands were not surveyed before the 24th of January 1818, and which are without such designations as will give a place of beginning for a survey, are not lands withdrawn from the mass of vacant lands ceded to the United States in the Floridas; and are void, as well on that account, as for being so uncertain that locality can not be given to them." Cases to the same effect are *United States v. Smith*, 10 Pet. 324; *United States v. Forbes*, 15 Pet. 172; *Buyck v. United States*, 15 Pet. 214; *United States v. Delespine*, 15 Pet. 318; *Dauterive v. United States*, 101 U. S. 700; *Ainsa v. United States*, 161 U. S. 208; *Muse v. Arlington Hotel Co.*, 68 Fed. 648.

by Micheltorena, who had been driven by a revolt from his capital, was not in the peaceful exercise of his official authority, and was shortly after compelled to abdicate. In *United States v. Rose*, 23 How. 262, the same facts are again reviewed, and the former decision confirmed. In *More v. Steinbach*, 127 U. S. 70, the claimant was denied recognition by the United States of his claim for lands in California because the Mexican *alcalde* who purported to perfect his title by giving him "judicial possession" acted without lawful authority.²⁵ An interesting case involving the Georgia-Florida controversy is presented by *Coffee v. Groover*, 123 U. S. 1. Here, a grant made by the State of Georgia to land which was situated in a territory claimed by both Georgia and Florida, but which was later determined to belong to Florida, conflicted with a grant to the same land made by the State of Florida. The court held that "where a disputed boundary between two states is adjusted and settled, grants previously made by either state, of lands claimed by it, and over which it exercised political jurisdiction, but which, on the adjustment of the boundary, are found to

²⁵ It should be remembered, however, that grants made by officers of the ceding state, even after cession, may be valid, if the receiving state authorized or later ratified such action. In *Ely's Adms. v. United States*, 171 U. S. 220, at pp. 231, 232, the United States Supreme Court says:

"It is doubtless true that a change of sovereignty implies a revocation of the authority vested by the prior sovereign in local officers to dispose of the public lands. And yet we think that rule is not controlling in this case, for the new sovereign made an order continuing the functions of the local officers, and one of those local officers making a sale in accordance with the provisions of the prior laws caused the money received therefrom to be paid into the treasury of the new sovereign, and that sovereign never returned the money thus received nor challenged the validity of the sale thus made. This is not a case in which the local officers attempted to dispose of public lands in satisfaction of obligations created by the former sovereign but one in which a sale was made for money, and that money passed into the treasury of the new sovereign.

"It would seem not unwarranted and unreasonable to refer to the familiar rule that where an agent, even without express authority, makes a sale of the property of his principal, and the latter with full knowledge receives the money paid on account thereof, his retention of the purchase price is equivalent to a ratification of the sale. We do not mean, however, to state this as a general proposition controlling all municipal and governmental transactions, but as only one of the circumstances tending to strengthen the conclusion that these acts of the intendant were not mere usurpations of authority, but were in the discharge of duties and the exercise of powers conceded to belong to his office."

be within the territory of the other state, are void, unless confirmed by the latter state; and such confirmation can not affect the titles of the same lands previously granted by the latter state itself." Numerous cases of a similar nature, which it seems hardly necessary to cite, may be found in the books, all deciding that the receiving state is under no obligation to recognize grants made by the ceding state which were void at their inception.

Perhaps the most interesting group of these cases are grants made *flagrante bello*. Where the whole or a portion of a state declares its independence, grants made within that state during the ensuing war of independence by the sovereign state which fails will be considered by the other as void. In *Harcourt v. Gaillard*, 12 Wheaton 523, the United States Supreme Court refused to regard as valid a grant to American land made by the British governor of Florida after the declaration of American independence. In much quoted language the court there lays it down that "War is a suit prosecuted by the sword: and where the question to be decided is one of original claim to territory, grants of soil made *flagrante bello* by the party that fails, can only derive validity from treaty stipulations." The rule of *Harcourt v. Gaillard*, however, is only applicable in a war in which two states are disputing the title to a given territory, and each claiming it legally as its own. "Where the title of the sovereign in possession is admitted, and the war is waged to compel him to cede his title or relinquish it, the rule is different, and such sovereign may convey his property during the war so long as he prevents his adversary from securing possession thereof, and the conveyance is made in good faith and not for the purpose of preventing his adversary from securing said property."²⁶

²⁶ In the Treaty of Peace of 1783 Great Britain did not grant to the United States its independence, but recognized as valid the Declaration of Independence of 1776, and the consequent sovereignty of the American States as dating from that event. A situation such as this has a very different effect upon the validity of land titles granted during the war from cases where by the treaty of peace the ceding state grants or cedes the territory in question to the receiving state. A case of the latter kind occurred in 1898, when Spain by the definitive treaty of peace with the United States ceded to the latter the Philippine Islands. Here, although Spain failed to win the war, up to the time of the signing of the peace treaty grants of land in the Philippine Islands made by the proper Spanish authorities where no fraud appeared, would be *prima facie* valid, and those made by the United States

VII. CONCLUSION

It will be evident from the foregoing discussion that the courts of the United States have worked out a fairly consistent body of law concerning the effect of change of sovereignty upon the private ownership of land. There can be no question that United States courts will not allow a mere cession of territory to the United States to injure or abrogate vested rights of land ownership, legal or equitable, held by individuals at the time of cession. It is equally clear that United States courts will feel free to disregard mere expectant rights which could not have been enforced as of right in the courts of the ceding state. Grants which were unenforceable before cession either because of unperformed conditions, or because of the indefiniteness of the grant, or because of the want of power in the granting officer or imperfection in the grant itself, will clearly not be upheld by United States courts.

This body of law seems so reasonable and so equitable that it is gratifying to note that the principles upon which it is founded are not confined to this side of the Atlantic. In England the courts have repeatedly quoted the *Percheman* case and approved the rule of law which it expresses. The rule is cited with approval by Calvo, and seems to be generally accepted as a correct rule of international law.²⁷

occupying forces would be *prima facie* void. The military occupant is deemed to acquire only a "usufruct" in immovables owned by the invaded state, and should safeguard the capital and administer such property "in accordance with the rules of usufruct." See 1907 Hague Convention concerning the Laws and Customs of War on Land, Regulation No. 55.

²⁷ Calvo in his *Droit International* (5th ed.), Vol. 4, p. 399, secs. 2478, 2479 says: "La conquête, nous l'avons déjà démontré, change les droits politiques des habitants du territoire et transfère au nouveau souverain la propriété du domaine public de son cédant.

"Il n'en est pas de même de la propriété privée, qui demeure incommutable entre les mains de ses légitimes possesseurs. 'Ce serait violer un usage qui a acquis force de lois entre les nations modernes,' dit le juge Marshall à propos de la translation d'un pays d'une souveraineté à une autre,' ce serait outrager ce sentiment de justice et de droit reconnu par tous les peuples civilisés que d'ériger en règle générale la confiscation de la propriété privée et d'annuler les droits particuliers. Le sol voit se rompre et changer les liens qui l'unissaient à l'ancien souverain; mais les relations mutuelles des citoyens et leurs droits de propriété subsistent intacts.'

"Ce principe de droit international et de haute équité a été sanctionné par tous

In France it is similarly approved.²⁸ The German law is built upon the same general principle.²⁹ It is likewise found in the Italian

les tribunaux qui ont été appelés à en faire l'application. C'est qu'en effet la base en est essentiellement rationnelle et logique. La conquête définitive du territoire met fin à la situation créée par la guerre pour y substituer les relations de paix et de bonne harmonie; et dès que l'administration militaire a achevé son rôle, l'autorité et le gouvernement civil reprennent le premier rang pour faire prévaloir de nouveau les règles du droit commun. Où l'État puiserait-il donc le pouvoir de confisquer la propriété de ses nouveaux sujets, que le fait d'avoir été des ennemis ne peut rendre indéfiniment punissables? Le conquérant n'a pas seulement le devoir strict de respecter les droits acquis; il est encore moralement tenu de chercher par tous les moyens en son pouvoir à en garantir le maintien et à en améliorer ou à en faciliter l'exercice.

"Le jurisconsulte américain Marshall, en traitant cette question spéciale, fait remarquer avec raison que par le mot *propriété privée* il faut entendre une possession reposant sur un titre entouré de toutes les garanties légales, complètement valide; sanctionnant des droits acquis et des obligations ayant force de loi."

²⁸ Gidel, in his *Des Effets de l'annexion sur les concessions*, page 90, says: "La jurisprudence américaine, qui a consacré ce principe de l'inviolabilité de la propriété privée dans une foule de décisions, s'est distinguée par la manière particulièrement large dont elle l'a entendu. 'Ce serait violer un usage qui a acquis force de loi entre les nations modernes,' dit le juge Marshall en des termes qui se trouvent reproduits dans tous les arrêts ultérieurs de la Cour suprême des États-Unis relatifs à la matière, 'ce serait outrager ce sentiment de justice et d'équité reconnu par tous les peuples civilisés que d'ériger en règle générale la confiscation de la propriété privée et d'annuler les droits des particuliers. L'allégeance des sujets se trouve modifiée: leurs rapports avec leur ancien Souverain se trouvent rompus; mais les relations respectives des citoyens entre eux et leurs droits de propriété subsistent intacts.' Telle fut la doctrine appliquée sans interruption par la Cour suprême à propos des annexions de la Louisiane, de la Floride, de la Californie, du Texas, c'est-à-dire au moment du grand développement territorial de la République américaine. . . . Les obligations dérivant de la seule équité devaient être protégées par le droit international autant que celles que dériveraient de titres strictement légaux. . . . La Cour de cassation française a, elle aussi, entendu dans un sens très libéral l'application de ce principe de l'inviolabilité de la propriété privée. Elle n'a pas sanctionné seulement les droits de propriété naissant au profit de particuliers de contrats passés entre eux. Elle a formellement reconnu et protégé les droits acquis par des individus sur le domaine public de l'État annexé. . . . Mais les aliénations antérieures à l'annexion, que le Souverain avait le droit de consentir sous la loi alors en vigueur, doivent être respectées après l'annexion. Et les tribunaux doivent respecter les droits acquis sur ce domaine par les particuliers avant l'annexion." See also an article by Pierre Descamps in 15 *R. G. D. I. P.*, 385, where the above passages are cited and commented upon.

²⁹ The law of Germany is set forth by Huber in his excellent treatise on *Staaten-succession*: "Ist es unbestritten dass die subjektiven Privatrechte, soweit sie wohler-

law.³⁰ It seems fair to assume, therefore, that the general principles underlying the decisions of the United States land cases are not of purely local extent, but are principles of international recognition and validity.

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worbene Rechte sind, von dem Wechsel der Staatsgewalt nicht betroffen werden" (p. 57). See also references there cited.

³⁰ See Fiore, *Droit International* (transl. by Antoine), p. 150, sec. 154: "L'État cessionnaire sera tenu de respecter les droits acquis par les particuliers relativement au territoire cédé et aussi les droits acquis par les fonctionnaires publics en vertu de l'exercice de leurs fonctions sur le territoire cédé.

"Cette règle est applicable aux droits qui peuvent être considérés comme acquis d'après les principes du droit commun, mais non aux expectatives, ni aux actes de jouissance basés sur l'abus ou sur le consentement implicite de l'État cédant."

SOME REFLECTIONS ON THE PROBLEM OF A SOCIETY OF NATIONS

A THOUSAND peace proposals doubtless could be accounted for in the last five hundred years. Some of them for one reason or another are famous. Dubois, Crucé, Podebrad, Henry IV, Rousseau, Kant, Bentham, Penn, Ladd, are names in this connection quickly recalled to memory.

Now why did all these proposals fail to be heeded by war-weary humanity? Two reasons may be given: first, for the most part they were paper proposals; there was not sufficient driving power behind them; they were written out, the ink dried, and the task was done. No more can a peace proposal organize itself on paper than can a corporation manufacture steel billets with a red-ribboned charter. There must be responsible and powerful initiative, and this initiative must come from a state. Of course, every paper proposal helps to fertilize the ground against the time when nature in its blind way is ready with a favorable wind to implant the germinal substance of a harvest, be it only of thistles or ragweed.

A romantic view of life has it that law grows, that it can not be created. Another similarly romantic allied notion is that man is a product of the earth like a plant. We would not deny the element of truth in these views which flourish or have flourished in the shadow of great names. But is not there something of one-sidedness in this; is not there some exaggeration? Does not destiny hold out some encouragement in the achievement of metaphysical purpose, of final ends, to the use of man's creative intelligence as a part of the process? It is fortunate for these reflections that on this philosophical jousting-ground, the beliefs, the practices, habits, and experiences of most men are often — or seem to be — favorable to effort.

A second reason why these proposals have failed is that they were all clearly impossible, as unreal as ghosts for the man of sound nerves.

They were part and parcel of a philosophy of morality and law with twin roots of that great intellectual phantasm, natural law, and of that powerful emotional force in the world, religion. The one ruled by force of reason (based on false and unreal premises), the other governed by excommunication. The essence of this philosophy was that there is an "ought" and a "should" superior to human nature. Let us hasten to say that we are not here concerned with the question as one of pure ethics. If there is an ethic, no doubt there is also an "ought." It is equally clear that when there is law in the Austinian sense, there is also a form of "ought" which is better translated "must." There may be, for anything we have to assert to the contrary, an "ought" and "should" outside of human nature; but there is, it is submitted, no "ought" or "should" in human nature.

The special vice of peace proposals has been to attempt the impossible task of putting into human nature what is not there and what can not be put there. The effort, therefore, has been — contrary to what long since was taught by Aristotle — to have states and nations do what they *ought* to do instead of attempting to discover what under given conditions they may be led to do. Here, the problem of "ought" as an ideal will have its proper place as a part of the psychic composition of peoples and states, but as a part only among a variety of other elements of which pure egoism unrestrained by moral duty is not the least.

If peace proposals are ever to succeed, the whole point of view must be revised. An effort must be made to estimate the impulses and directions of the social mind, and to act in accordance with these impulses regardless of their ethical bearing. The only theoretically workable alternative is the imposition of force, — and this in turn is practically impossible, because the necessary mass of power probably can not be organized.

The peace proposals of recent years continue to be infected with the fatal germ of piety; but already a number of discussions have clearly shown insight and understanding of the essential difficulties, by avoiding confusion between the possible and the desirable. Most of those thinkers who have reached the right road, it is needless to say, are pessimistic of success, and we think properly so. It rarely

has entered into a concrete scheme for peace to consider life as it really is — a perpetual conflict of forces. This struggle is never ended either within or without the state. In this turmoil of action and reaction even states are simply the phenomena of the underlying forces, the expression which is apprehended by the senses. Perhaps less is known of the nature of these forces than of anything else in the field of sociology.

The attitude to which reference is made ignores the necessity of explanation and even the thing itself. State organizations are regarded as static ideas to be dealt with at a peace conference as beyond the fate of change or the processes of life and death. It is interesting here to compare the map of Europe at the end of each century since the Christian era. As every one knows, there have been repeated alterations in the political, ethnic, and economic situation.

Would peace advocates regard each and all of these violent changes as undesirable? In other words, would it have been better from some point of view not yet disclosed by peace proposals, at some point in the process of flux, that the world should have been tranquilized? If so, at what point should the graveyard of peace have been established?

No doubt this way of putting the question is unfair. No one desires to make a graveyard of the world whether by means of war or peace. It is not necessary to go to extremes. The intelligent peace advocate will admit that nothing stands; that change is inevitable; and he will say that he does not object to changes of political maps, if the element of brute force is eliminated. The answer will seem decisive.

It will, however, entirely overlook the hard fact that humanity has not yet discovered any method by which, except within the state, and there only relatively, brute force can be avoided in extreme cases of conflict. The arbitral function of state justice was not an invention which rapidly spread from one tribe and nation to another by imitation. It was a slow and painful growth. The fact that it was only about a hundred years ago that wager of battle was formally abolished in English private law is simply one of many indications of the proximity to our age of private vengeance and the blood feud.

Is a world federation possible? The question under consideration is not if a world federation will be realizable after the efflux of centuries or millenniums, but will a world federation be a practical program as a part or as a sequel of the settlement of the present war when it shall have run its course? Even the limited answer which will be attempted must depend on the character of that settlement. If the settlement is such as to leave deep-seated grievances—whether ill-founded or not—in the heart of a powerful state, the probabilities of future war will cancel the possibilities of peace. Such grievance may be also a serious stumbling-block to the creation of any sort of international federation.

A celebrated modern instance proves the point. In 1871 Germany by force separated Alsace-Lorraine from France. France has not forgiven or forgotten, and France continued to be a powerful state. A treaty of peace did not wipe out this deep-seated grievance. The tongue consented, but the mind revolted. It is true that Kant in his *Entwurf zum ewigen Frieden*, taught that there should not be a hidden reservation of future war as to a matter adjudicated by treaty. Neither this benign and thoroughly legalistic precept nor the treaty of adjudication has been sufficient after a lapse of nearly fifty years to destroy in the minds of French statesmen and of many inhabitants of the lost provinces a feeling of irreparable injury.

A world federation is possible if too much is not expected. We have already what is a world federation in the Postal Union. A federation as such for various purposes is clearly realizable; but a federation with any kind of a program involving something more than arithmetic and accounting must be considered at the outset to be of questionable present utility even if such a federation could be formally organized.

A good illustration of the difficulty is afforded by the Hague Convention on Bills of Exchange and Promissory Notes. There was sufficient good will, and the subject itself was emotionally colorless, but complete agreement, chiefly because of two forms of legal habits which could not be reconciled, was impossible. The law of bills of exchange is *par excellence* a field where a distribution and evaluation of interests does not appear. It is a department of law essentially with-

out justice. Regulation is sufficient. For the merchant and banker it is indifferent (having regard for convenience) whether an indorser, for example, can be bound by one ceremonial or another. And yet the opposing camps could not agree on what after all was only ceremony, because these rituals had in certain particulars become a part of differing folkways. One camp would cut slices from the sacrificial bullock making a double fold with raw collops; the other would have triple folds with Lesbian roots brayed in a mortar.

If this thing was impossible, how much more impossible is a permanent international court, a league of conciliation, a league to *enforce* peace, or any other sort of league which is to make nations and states good, pious, and, especially, unwarlike? No one knows. That the Treaty of Westphalia and that the Holy Alliance (a propitious name!) did not harmonize the world afford nothing but bad examples. Like cases at law, they are worth no more than their facts.

When we ask if a world federation is possible, we mean, of course, will it be usefully realizable when the slaughter-house episodes which are hardening the entire world to the most robust ideas will have ended. We must answer that we do not know absolutely; but the background of our information of what group human nature is constituted leads us to think that the idea is *prima facie* unworkable. That, of course, the idea eventually, in some hundreds or thousands of years, will be realized admits of no element of rational doubt.

That the problem of realization at this time — at the end of the present war — admits of doubt is sufficient to justify any effort made to solve it, even against the overwhelming probabilities which forbid expectation or even hope. The future day of accomplishment at least will be hastened by years or centuries by the efforts of the many in the present. There can be little doubt that all civilized states would gladly embrace the opportunity to end war if their vital interests could at the same time be secured; or, more accurately, if the various states could be convinced that by an arrangement other than resort to arms their natural powers of development would not be subjected to artificial and disadvantageous limitations. There seems to be a view, it is true, not alone expressed by isolated individuals in Germany, that "the sterilization begotten of a long peace is as much the nemesis

of a nation as the vainglory of a Napoleon." There seems to be a view, it must be acknowledged (and one does not need to resort to the Machtpolitiker Clauss Wagner to find it), that "war is necessary to mankind; and that all history shows it to be inevitable." It is difficult to believe, however, that this view is representative in any country of the thought of but a small minority. This is not to deny the undeniable, that the imperfections of human nature and the lack of international organization have in combination made war inevitable, or that perpetual struggle and competition have been an important factor — a factor not to be eliminated this side of Nirvana — in social and political development.

For an understanding of the problem something would be gained by an inspection of the field of private law in its evolution. There are certain striking similarities between states and clans. There also is an important difference in that there is not found among states, as among most contiguous clans of primitive law, blood relationship which of itself leads by a natural process to tribal organization, and later to a folk system. There is another feature peculiar to state relations in the modern age, in that the arbitral idea, which does not normally appear in primitive law antecedent to the era of tribal chieftainry, is highly developed and very commonly practiced by states. According to Darby, there were six arbitrations in the eighteenth century, 471 in the nineteenth century, and 63 from 1900 to 1903. The increased ratio continued to be maintained up to the beginning of the war. The character of the development is shown by the record of the cases decided by the Permanent Court at The Hague and the matters referred to Commissions of Inquiry under the Hague Convention of 1907.

These two anomalies in the present relations of states — a clan organization without inter-clan blood ties and the development in that low order of social organization of the arbitral idea — indicate that the relations of states are *sui generis* and that the usual evolutionary development, which seems to govern social organization and the growth of private law, will not necessarily determine the organization of states. The composition-system stage has ethically and intellectually long been passed, while at the same time the primitive

remedy of *pignoris capio* or reprisal remains a standard resort in international law. The *civitas maxima* is also by the same reasoning beyond the range of possibility. And, as the relations of states are *sui generis*, so also will their organizations be *sui generis*. An inspection of primitive institutions will, however, be valuable in showing what may be expected of the future.

The crucial question is whether a society of nations may be successfully organized without first passing through the series of phases which regimented savage and barbarian societies. In savagery, the regimentation, according to Powell, is families organized into clans (reckoning kinship in the female line), and clans sometimes into tribes (reckoning kinship in the male or female line together with affinity), and tribes into confederacies. In barbarism, according to the same authority, the series is families, gentes (reckoning kinship in the male line), tribes, and confederacies. It is clear that if the evolution is to be the same, an intermediate step must be accomplished before confederation can be attained, or that a substitute must be found. The analogues representing the differences between clans and gentes do not readily appear, while other features, such as similarity of law, language, and political forms, trade relations, etc., may perhaps be found as representatives of some of the characteristics of primitive regimentation. The organization of the British Empire, treaties of mutual support in war, and intermarriage among royal houses are facts which clearly show the tendency of states to break the narrow barriers of independent clan organization. Only a detailed study of tribal society and a like study of modern societies to discover similar or analogous functions and forms would suffice to project clearly the path and intensity of the natural evolution toward the realization of a confederacy of states. In the meantime, however, this natural process of development may perhaps be aided and abbreviated by conscious efforts.

What is the present maximum possibility of world organization? To answer the question, one may speculate, and as mere speculation one guess may be as good as another, depending on one's bent of mind. The hopeful man will not stop short of a revised United States Constitution with seven articles and a Bill of Rights, to which should be superadded a Declaration of Independence from Human Nature.

Less hopeful minds will suggest some form of a Coercive League of Arbitration of Liberal Nations, or, *diminuendo*, a Council of Conciliation, etc., etc. It is likely enough that any plan will fail for concreteness of any kind and that no plan devised by the wit of man will achieve its planned purpose. If it succeeds, its success will be lost beyond recovery in a heterogeneity of ends.

What then is the maximum possibility? The answer may be given after the fashion set by the Delphic oracle, as the minimum possibility. The minimum possibility is a world organization not with a plan, but a world organization with a purpose — the purpose of finding a workable substitute for the costly and cumbersome appeal to arms.

If the United States should invite the powerful states of the world to a conference in the United States and should put at the disposal of this conference, say a hundred million dollars, to take such steps as a *permanent* conference as it might find desirable and possible to eliminate the function of force in the adjustment of interstate concerns, is there any reason to believe that any one of the forty-odd sovereign states would not gladly respond, if the sending of official representatives involved no actual delegation of power but simply the sending of agents with power to assist in formulating proposals? Yes, it is entirely possible that the bruises of war unforgotten and unforgiven would cause a now enemy state or group of states to stand apart. It is also possible that a state would, because of what may fall from the lap of war, rather reserve the resort to club law until it was more favorably circumstanced. The possessor is willing to invest possession with the title of ownership, but the disseizee has no respect for a statute of limitations whether short or long. This much of the possibility concerns future events, and the answer must lie with the prophet and the soothsayer.

The necessary good will, the initiative, and the justifying results have already twice been demonstrated in the Hague Conferences of 1899 and 1907. The first conference represented twenty-six of the Powers, and the second represented all the sovereign states except Abyssinia, Costa Rica, and Honduras, a total of forty-four Powers. There was lacking, however, a feature in these conferences highly

essential to achieve the quickest and largest measure of results. They were *temporary* organizations. The first Hague Conference finished its conference work in little more than two months (May 18, 1899, to July 29, 1899). The second conference sat about four months (June 15, 1907, to October 18, 1907). A remarkable volume of work was dispatched, but it is safe to say that not one of the fundamental problems was solved. The event speaks for itself. Nor will these essential, these basic problems be solved by a third Hague Conference, or a fourth, or a fifth. *No temporary organization can accomplish the great task.* Nor does the plan of formulating and exchanging treaties offer much encouragement. Many illustrations in primitive law might be instanced to show the high necessity of personal face-to-face participation in legal transactions. International peace can not be organized merely by exchanges of papers. There must be an organization, and this organization must be a permanent one. It is an illusion to suppose that a drafting of "principles" is either necessary or efficacious. The important thing is not what is said, but what is done.

The United States as the richest state is so circumstanced that it may achieve in its own policies a greater measure of altruism than any other great Power. The United States is not a nation state, and while doubtless subject to competitions for influences among its racial elements in state policy and action, is less subject to purely racial forces than any other comparable state. Centuries will elapse before its present heterogeneous population can be fused to an indisputably predominant type. Its undeveloped resources are so great that many decades will pass before it will feel the vital necessity of expansion. The United States has less to gain in a material sense and less to lose in a similar way by a successful organization in the ways of peace than any other country. This does not remove us from the outlook of present or future danger from other states; but it does make it possible to look upon the United States, prejudice apart (and it never is apart), as the least dangerous of states measured in terms of relative power in such egoistic material interests as would likely be asserted by war against others.

Assuming that a world organization for peaceable competition is desirable, the United States is the only country which after the war

can take the initiative of calling a conference. The conference should be held in the United States because of the psychological advantages which attach. A democratic social atmosphere, an intermediate position between the Orient and Occident, and aloofness from the complicated influences of European politics, are advantages which are quickly apparent. It is, therefore, fitting and desirable that such an organization should be nurtured within the domain of this the most powerful and the most altruistic of states.

The conference of delegates should have no actual power; and they would then differ in no way from a voluntary conference of delegates, except that they would be *official* representatives of their respective governments, proceeding to organize in a *permanent* way for the consideration of a specific problem, with ample means to do the work for which they were organized. They might be likened to a common-law jury which is locked up in the juryroom until it is ready to bring in a verdict.

The position of such a conference is, however, better described by another example of which it is an almost exact counterpart — the Conference of Commissioners of Uniform State Laws. First of all, that body is a *permanent* organization. The commissioners are officially appointed in the several States, with financial support; and they are in effect intermediaries between the various States in the matter of standardizing legislation. They have power only to propose legislation; but the practical result which they have achieved is such that in scientific importance it seriously rivals, if it does not even overshadow, the entire bulk of independent efforts of the various States acting on their own initiative in the same period of time.

There is a manifest difference between standardizing existing institutions and creating new institutions; but it might be hoped that the disadvantage would not be more than one of proportion measured by the relative difficulties of the work to be done. If that much could be asserted — and it is by no means certain — such an organization would in some years exhibit results justifying its existence. The accomplishments of the two Hague Conferences warrant a large measure of reasonable expectation.

The scope of such an organization, therefore, would be to study

the problems of conflicting state interests and to attempt to work out plans upon which it could agree, for submission to the states of the world. It should have ample means to lay its proposals before the legislatures of the world for ratification; and it is fair to expect that any proposal agreed upon would have the greatest weight, especially in the countries where the delegates of those countries had already given their approval.

As the delegates should be without actual power, although of ambassadorial rank and privilege, so also they should be without limitation. Either the giving of power or the stating of limitation would be injurious if not destructive. *There must be no advance program.* This is necessary on two grounds: first, because no program could be fixed in advance; and second, because it will further the objects of such an organization — which is to be permanent — if it learns to overcome difficulty by first dealing with nonessentials. Any one with a little ingenuity can of course outline a neat plan of organization; but this must be the task of the organization itself. It must learn to work, and the problems of organization are the most harmless things it can undertake. When those problems are solved, the organization will understand itself and will be able to attack greater difficulties.

When the preliminary tasks have been adjusted — of the language or languages to be used, the place of meeting (an internationalized domain), officers, sessions, and general routine — other problems will at once appear. Among the earliest will be what is always earliest in legal evolution, the settlement of existing disputes. When difficulties arise, an international organization will be in the field whose special care it is to avoid armed conflict. This organization with its great intellectual prestige and great moral force will find a way to offer its service. Out of continued exercise of its arbitral functions, if successful, there will grow up, not as an artificial, made-to-order creation, but as a spontaneous and natural consequence, a world court.

How slow and painful the process has been of development of the judicial establishment has been attested in the history of all nations. Rome, with a racial genius for law, was the most successful of all in early achieving the suppression of the blood feud. But by what magic process? Not a neatly devised judicial establishment where order

and dispatch prevailed, but by one of the most singularly cumbersome and complicated methods ever observed in the history of law. This was the magic. Human nature was thwarted by indirection. The *ordo iudiciorum* of the Romans can not be understood as a system of justice; it was a system of human nature.

The judicial function, therefore, will be the earliest to develop. It has been the central thought in modern times in peace plans, and a great deal of valuable thought has been devoted to it in recent years by various experts in civil and international law. The necessary ideas are already in stock, and no irremediable difficulty need be anticipated in organizing in time a permanent court of permanent judges with cognizance of matters of law as distinguished from matters of legislation. The functions of a court in the strict sense must not be confused with the functions of an arbitral board, of a commission of inquiry, or of a board of conciliation. Much will be gained in keeping these functions separate, at least theoretically. Even before the rudiments of a court can be established, such an organization will develop an executive head and an executive council. It is not too much to expect that within a limited time it will develop in form the organs of an efficient governmental body without, however, possessing governmental power. There will be an advantage in this, since the states of the world will in the course of years find that much of their mistrust of others is without foundation; they will learn to coöperate internationally; and they will discover by repeated experiences that there are solutions in the ways of peace for most of the great problems which are provocative of war.

Logically, one might go on to show that with an organization of conspicuous intellectual and moral influence representing the best of the ability of each independent state, with a record of achievement, avoidance of armed conflict, and successfully elaborated proposals which remove or tend to remove the causes of conflict, the next step would be to invest this great and powerful organization with actual physical power, which is in the last analysis an essential element of juridical law. In other words, the logical issue would seem to be a conference of delegates or commissioners which becomes an international legislature; a president who is commander-in-chief of an

army and navy; and a tribunal which may not only decide, but may order, adjudge, and decree.

This supposedly logical result we believe is so far from attainment that it may be dismissed as a practical impossibility; and there are reasons to be mentioned why it probably never will be realized. It may sooner be expected that a system of international socialism would precede it.

A recent writer has shown that within the clan there is no idea of punishment. Neither within the clan is there a formal idea of law. It is only with the rise of the tribe composed of distinct clans that the concepts of punishment and of law begin to take on a juridical aspect. The clan lives and moves by folkways and instinct. The conscious stage is found only in the higher forms of social organization where new functions bring out new methods and new ideas. For centuries, the centuries of law, man has worked out his fate on the rational plane, and employed his law with the accompaniment of open or latent physical force. As, however, physical force has receded more and more to the background, the earlier phases of clan organization have reappeared as distinctive of social reactions. As civilization and peace progress, punishment becomes less emotional, obedience more habitual, and law less conspicuous in its first aspect of force. Social or moral force displaces political or legal force. Where one is strong the other is weak.

It is not practically conceivable that a superstate can exist based on physical force under the existing distribution of physical state force, that is to say, that such an organization can come into being without such a redistribution of these forces as would physically overwhelm all antagonism and opposition in favor of one state or a group of states allied by language or blood. Such a redistribution also is practically not to be thought of. There remains only the possibility that an international organization with the organs of a superstate must depend for its power on an internationally social cohesion of moral forces. The differences of language and race are today too great to permit of rational expectation that, except perhaps after a lapse of centuries, there would be developed that fundamental unity of interests and consciousness of kind, that relative homogeneity of social impulse in the international sense as would bring into being

the alternative possibility of a superstate based on social force. Both points of the dilemma are practical absurdities, and whatever effort is devoted in either direction must be entered in the column of uncertain collateral profits.

It is a capital defect of peace proposals that the irrational factors of the group psyche are never taken into account. Too often the problem is regarded as one in which all the elements are purely rational and that all these rational elements are fully understood. The problem then becomes one of the pure mechanics of human nature to be solved by a similar mechanical adjustment of political powers. The elaborate discussions and proposals based on nationality are in point. The distribution of political power has not been governed solely by race consideration, as the map of the world eloquently shows. States are not artificial creations, but products of nature, of human nature. This human nature is oftener egoistic than altruistic, and it is well to recall occasionally, without abating our efforts to advance ethical values, the Carlylean formula (quoted by Bagehot) that the ultimate question is, "Can I kill thee, or canst thou kill me?" Since states are products of irrational forces, it is idle to think of a redistribution of territories or of peoples without evaluating the irrational factors which will control the possibility of such a thing. Will the power-forces consent? Furthermore, can the proposal be carried out, assuming its factual possibility, on any consistent principle?

A convention of delegates will also not be free from irrational influences. We once had a Constitutional Convention which succeeded in working out a great political document. That fact is not to be forgotten, and it is hopeful. But a congress of Americans and Spaniards, of Englishmen and Germans, of Chinese and Japanese, of Italians and Turks, will be a different gathering from that of a Washington, a Hamilton, a Franklin, and a Madison.

Another obstructive factor will lie in the fact of representation by the various states by delegates. It is of the essence of representation that it is never larger than the source of its power, and in practice it is restrictive. The centrifugal forces of such a gathering will be so many that it would require the most reckless optimism to expect in any given time but the most slender results. But if a convention

is called together, it must by every means be held intact *de jure* as an organization. It may be expected that at times the differences of opinion among groups of states will become so acute that a state or a group of states will withdraw. In that case conciliation must be employed to bring the seceding members back into the organization.

While irrational factors must be reckoned with in any undertaking which seeks to rationalize a field of activity which has been governed predominantly by the irrational, there is a counterforce which may be employed, itself irrational, to overcome these blind powers of obstruction — time. There is nothing rational in the concept of time, and yet it is a greater force than war itself, which is said to be the father of all things. Time is the greatest of slayers and the greatest of creators. Nothing in the world can withstand its power.

It is for this reason that we emphasize not a plan for peace, not a concrete proposal, but an empty thing which may contain everything — an organization. It is also for this reason that we emphasize the high necessity of keeping this organization intact, regardless even of war; since if that much can be achieved by the efforts of man, the forces of nature will sanctify the achievement.

The difficulty will not be with the so-called justiciable disputes. Civilized states are thoroughly accustomed to the arbitral function in settlement of matters of law and equity. There have been already a sufficient number of Hague arbitrations to indicate that in this particular field an international tribunal will likely find success. The assumed difficulty of abdication of sovereignty is no more real here than in the shield scene of Homer or the symbolical *manus consertio* described by Gaius. There is nothing inconsistent with sovereignty in a moral submission of a money controversy. How far some states will go in these matters is attested by the number of arbitration treaties made since 1903, and conspicuously by the treaties of Denmark with the Netherlands (1904), with Italy (1905), and with Portugal (1907), where the reservations of the Anglo-French treaty (1903) were eliminated and an agreement made to arbitrate every difficulty which could not be adjusted by diplomacy. The fact that the larger states declined to arbitrate everything has a deep-seated meaning which can not be overcome by moral indignation or by enthusiasm for peace.

The lethal dangers of war lie not in justiciable disputes (although these, too, have often enough contributed their share of destruction), but in the nonjusticiable disputes. The field of nonjusticiable controversies does not appear, so far as the present writer is aware, to have been clearly and sharply marked off; but there is no difficulty in recognizing the type if the example lies beyond the penumbra. Among the most important of them, and it might be said the leading kind of nonjusticiable disputes, are those which arise from collisions of expanding social forces each determined to express its individuality. These are the very forces of nature itself. Nothing can destroy them; nothing can diminish them. They are themselves the makers and the destroyers of peoples and races, of empires and of republics.

Until mankind is converted into pillar-saints or social forces are broken up into individual fragments under a system of world socialism, both unlikely enough, these powers, which mine below the surface of things and inspire the limitless diversity of all activities, will continue their despotic sway over human events. If the power resided in any individual or aggregation of individuals to stay this remorseless process which builds only to tear down, it would be the sin against the Holy Ghost to exercise it; since from that moment the pall of death with no resurrection will spread over the earth.

What then are we to do? Shall we glorify war which so well embodies the spirit of this movement? By no means! We must plan, and patiently make experiments, to control, if possible, the irrational element in these forces, with the object of making them useful by standards which are pragmatically successful.

No state by a treaty can agree to commit suicide. No state can agree so to limit its activities that it will bleed to death. In private law such an agreement is void; likewise by the Ulpianian law of nature such an agreement between states is a nullity. If the form is entered into, the content will not be observed if there is sufficient force power left in the state which has made so disadvantageous a bargain, to do otherwise; and if it has not sufficient power to resist, it no longer is a party to an agreement. As the Romans would say, the act is governed by *vis atrox*, and such a state is likely soon to prepare itself for the mortuary ceremonies.

Any limitation, whether by treaty or howsoever, which limits the free expansion of a state in a universal competition of interests takes on the aspect in some degree, however slight, of a suicide arrangement, unless there are compensating advantages. Many such limitations will be borne at least temporarily; others will be combated by the ultimate resort. All such situations, exclusive of those which are presented in matters already standardized by law and equity, are nonjusticiable. Slowly and patiently, as in the development of the substantial content of rules of private law, standards must be attempted which will gradually raise these subjects to the plane of law.

The essential conflict which lies at the basis of all human activity will continue in unabated vigor, just as it now also continues in the whole field of private law. No rule of law can be permanently fixed; it is subject at all times to the play of competitive forces for its existence. So also will it be when nonjusticiable subjects of controversy are converted by standardization into justiciable subjects. That, however, is a fact yet unrealized; and the effort must be to attain a method of adjustment where none is now provided. The inherent great difficulty of the problem and the inevitable long period of gestation are enough to give pause to the hope of an early or successful solution.

Matters which touch the pride or honor of a state or a people are likewise nonjusticiable; that is to say, there are no rules in existence or any standards which touch the case. Aggression is the only solution now available. Such nonjusticiable conflicts are, however, in a class entirely distinct from those already discussed. It may be doubted whether any satisfactory standard here can be created, or whether it will ever be expedient to attempt it.

International relations are not distinctive in this. Private law also makes a similar separation of interests and claims. Thus æsthetic interests are only exceptionally recognized by the law. Some of the grossest mental cruelties go entirely without legal reprobation either by civil or criminal remedies. It is not believed, however, that in international relations these conflicts will be so conspicuous as to cast doubt on the possibility of standardizing the relations of states. These

matters may be left to the deportment of nations with, of course, the risk that now and then conflict may arise.

The ideal of standardization is to allow each state the greatest scope of *formal* freedom of activity based on the greatest possible extent of *material* equality of opportunity. It is likely that all the civilized states in the world would subscribe to this program; and it is equally probable that no two states could agree on the first concrete interpretation.

There are physical obstructions to material equality of opportunity. These are of two kinds: first, lack of access to harbors and waterways; and second, differences in soil and climate. The first drawback could conceivably be modified by internationalizing all navigable waters. Even a landlocked country like Serbia could, if one were a benevolent despot of the world, be provided with an easement to the Adriatic. Inequalities of soil and climate can not be equalized, and each state must work out its fate on the terrain where history has placed it.

By far the greatest difficulty in providing an equality of material opportunity would come in the adjustment of surplus national forces of population. Many states have colonial possessions. Whether acquired by force or purchase is not highly material. Such states have in such possessions advantages not equally realized. Much the same philosophical question of justification is applicable here as in the field of private law. A peaceable expropriation of colonies may be as unjust as the owning of large estates by a few individuals in the midst of a great proletariat. It is evident that a solution of this essential problem — essential because it is a part of the expression of the individuality of every state, and because it will not be ignored — can not be worked out in advance and that it must rest within the slow enucleation of time. A number of recent writers on peace proposals have shown their understanding of the necessity for providing an outlet for the unhampered expression of state force by attempting to outline in one form and another a universal free trade. Even Émeric Crucé saw in this datum of human nature one of the great causes of war to be removed by freedom of commerce.

It is, therefore, not a question of what states can be compelled to

submit to by force at any given time, nor yet what states ought to do or refrain from doing in their expression of the life principle. The question, first of all, is, What do states want? What are the natural tendencies of human nature which seek satisfaction? The secondary question is the ethical and practical one of adjustment of these wants where other wants are in conflict. The basis is one of power-relation based on interest. Might comes before right; and nothing, it may safely be said — and the truth can not be too loudly acclaimed — does more injury to a correct, a just and possible solution of these great controversies than the attempt to reverse this order of thought.

The United States is today the leading country of ethicism. It is with us a political tradition, and there are economic foundations which have tended to foster it. The political tradition came to us as one of the donations *causa mortis* of the natural law of the 1700s. The economic support came from our geographical situation. In an incredibly short time the United States became the richest country in the world. It has been and is a country of wealth and opportunity. The hard conditions of life do not bend down the backs of energetic and capable individuals. There is room and fact for unbounded optimism, generosity, the feeling of well-being, and successful effort. All this leads to a philosophy of conduct where each man believes that as a human being he has equal rights with all others; that these rights are imprescriptible; and that they are a part of the moral constitution of the universe, valid for all times and all places. The fact of economic freedom of the middle classes has by an easy transition been transposed into a kind of metaphysical symbol. There is no country where "rights" are oftener spoken of, or any country where the term is used in more senses.

If, however, the economic situation were changed and one-third of the entire population were habitually on the border line of starvation, with the doors of opportunity locked by a system of caste and overlordship, it is safe to predict that the point of view would quickly shift to a more realistic basis. The economic classes would then measure not their forces of right, but their forces of power. If the United States is to take the leadership in a permanent congress of states, it must in its own leadership learn that our conceptions of right are folkways

and nothing more, built up by political traditions and economic surroundings. This leadership must not make the fatal mistake of assuming that our own happy folkways can be imposed instantaneously on other folkways; and it must profoundly understand that the efficient and permanent forces of the world are the wants of human nature, the expression of group interests, and the psychic dispositions of nations and states, the sum of which is the moral philosophy of particular social aggregates.

We conclude that the *form* of world federation is both possible and desirable. The United States, because of its ethicism both as a government and of its constituents, is more favorably situated than any other country to institute such a federation. The organization must be a permanent one, regardless of the many breakdowns which may be expected. It must at the outset be provided with a liberal sum of money. Its deliberations should have the widest international publicity.

It would be useless and impracticable to attempt any detailed discussion of the form of organization, or to suggest any concrete plan for the judicial, administrative, or (quasi) legislative functions of such a congress. Hundreds of concrete suggestions, many of them valuable and nearly all instructive, are already available, especially on the judicial function.

Such a congress should have no actual grant of political powers, and whatever powers it might acquire would come in the course of time and experience, and especially through the development of habits of international thinking. No state would give up any part of its sovereignty, and there would be no direct physical power to compel submission to any resolution of the federal diet. In the process of time it is possible that by the cohesion of forces, supported by a unity of thought of preponderant states, a form of positive power (direct force or authorization of force) or a form of negative power (commercial boycott) might develop; but any such suggestion of a grant or absorption of force would be a source of obstruction to the creation of a permanent international conference. In a word, such a congress should not in advance be committed to anything more than a continuous discussion of the practicability of realizing the idea of standards

of conduct in international relations. Any advance concrete proposal even of principles might be fatal to success and would be in any case obstructive.

The essential problem is realistic. It is not what ought to be the relations of states, nor yet what states can be compelled to accept by any combination of force, but what methods will successfully standardize and stabilize the diversity and clash of power-interests in international affairs with the fullest possible measure of free competition.

ALBERT KOCOUREK.

TERRITORIAL PROPINQUITY

In an exchange of notes of November 2, 1917, between Secretary of State Lansing and Viscount Ishii, Special Ambassador of Japan, occurs the following paragraph:

The Governments of the United States and Japan recognize that territorial propinquity creates special relations between countries, and consequently, the Government of the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous.

That states are more interested in the immediate neighborhood of their frontiers than in remote parts of the world, and are apt to carry on a disproportionate commerce and intercourse or even to expand in such regions, are facts familiar to all students of history and diplomacy; but that geographical position should create special legal capacities is a doctrine perhaps more unfamiliar and seemingly in conflict with certain traditionally repeated maxims, such as the equality of states. If peculiar geographic relationship gives rise to peculiar legal privileges and responsibilities, an absolute equality of states can not be assumed, although equality before the law or equal protection of the law might still be recognized. The fact is unquestionable that on frequent occasions the geographic position of territory has been offered and accepted as a justification for exceptional proceedings, admitted, in some cases, to be otherwise contrary to the requirements of international law.

In its recognition of territorial propinquity, the Lansing-Ishii agreement does not stand alone. An inspection of the cases shows that they may be classified according as geographic proximity has been mentioned to justify (1) the annexation of territory, (2) the enjoyment of special economic privileges, (3) the exercise of extra-territorial jurisdiction, or (4) the protection of special political inter-

ests. Territorial, economic, jurisdictional, and political interests have each been presented on occasion as deserving special consideration in neighboring territory.

1. ANNEXATION OF TERRITORY

(a) CONTIGUITY

The claim to unoccupied territory on the ground of proximity is familiar in international law, though it has not always passed without protest. The principle is described as contiguity or continuity, according as the territory in question is or is not separated by water.¹

The right of a state to islands within its maritime belt has been universally recognized, and Lord Stowell's well-known decision in the case of the *Anna*,² besides asserting that islands formed of alluvium beyond the three-mile limit belong to the mainland, suggests that the same is true of those occupying a strategic position.

The German Prize Code³ recognizes "islands situated not more

¹ The claim to dominion of portions of the sea itself has been attributed to proximity. Grotius, *De Jure Belli ac Pacis*, ii, c. 3, secs. x, xi; Bynkershoek, *De Dominio Maris*, c. 2, par. 1; Pufendorf, *De Jure Naturae et Gentium*, Carew, trans., iv, c. 5, secs. 7, 8; Heffter, *Europäisches Völkerrecht*, sec. 74. A limited jurisdiction over contiguous waters, beyond the maritime belt, was implied in the American objection to the hovering of war vessels about its coasts while neutral. In a note of December 16, 1915, Secretary of State Lansing contended that "This government has always regarded the practice of belligerent cruisers patrolling American coasts, in close proximity to the territorial waters of the United States . . . as vexatious and uncourteous to the United States." The British Government was "surprised" at this "claim to distinguish between different parts of the high seas." (Note, March 20, 1916.) The United States, however, reaffirmed its attitude with references to earlier precedents and to an analogy: "In time of peace the mobilization of an army, particularly if near the frontier, has often been regarded as a ground for serious offense and been made the subject of protest by the government of a neighboring country. In the present war it has been the ground for a declaration of war and the beginning of hostilities." (Note, April 26, 1916.) This JOURNAL, Spec. Supp., 10: 377, 379, 385. For German references to the Russian mobilization on her frontier as a "threatening measure," see ultimatum, July 31, 1914, and declaration of war, August 1, 1914, Naval War College, International Law Documents, 17: 100. See also German note, January 12, 1917, United States White Book, No. 4, p. 314.

² The *Anna*, 5 C. Rob. 373 (1805); Scott, Cases, p. 684.

³ *Prisenordnung*, September 30, 1909; *Reichsgesetzblatt*, August 3, 1914, Art. 3a.

than six sea miles from the coast" as belonging to a neutral state on the mainland for the purpose of measuring the maritime belt, free from belligerent operations, and Dana⁴ asserts that "islands adjacent to the coast, though not formed by alluvium or increment, are considered as appurtenant, unless some other Power has obtained title to them by some of the recognized modes of acquisition."

Peru, following a suggestion of Lord Palmerston in 1834, asserted that the proximity of the Lobos Islands to Peru would give her a *prima facie* claim to them, although they were over twenty miles distant.⁵ A similar basis was offered by Venezuela as a claim to the Aves Islands,⁶ by Hayti to Navassa,⁷ and among others, by Spain and later Argentine to the Falklands,⁸ although the latter are almost two hundred and fifty miles from the mainland. All of these claims gave rise to considerable controversy, the result of which seems to support Mr. Fish's contention in the Navassa case that the utmost to which the argument amounts "is a claim to a *constructive* possession, or rather to a right of possession; but in contemplation of international law such claim of a right to possession is not enough to establish the right of a nation to exclusive territorial sovereignty (Vattel, Bk. 1, Chap. xviii, sec. 208)," ⁹ which, according to Mr. Webster in the Lobos Island case, must be supported by "unequivocal acts of absolute sovereignty and ownership." ¹⁰

⁴ Dana, note to Wheaton's International Law, sec. 178. See also Halleck, International Law, 1: 138; Westlake, International Law, 1904, 1: 116, who considers the possibility that an island, even within the three-mile limit, might be possessed by a non-contiguous state on account of prior occupation.

⁵ British and Foreign State Papers, 31: 1097; Moore's Digest of International Law, 1: 266, 575.

⁶ Mr. Marcy, Secretary of State, to Mr. Eames, Minister to Venezuela, January 24, 1855, Sen. Ex. Doc. 25, 34th Cong., 3d Sess., p. 4; Sen. Ex. Doc. 10, 36th Cong., 2d Sess., p. 225; Moore, 1: 571.

⁷ Mr. Fish, Secretary of State, to Mr. Preston, Haytian Minister, December 31, 1872; Moore, 1: 266, 577.

⁸ Decree of Buenos Ayres, June 10, 1829, British and Foreign State Papers, 20: 314.

⁹ Moore, International Arbitrations, 4: 3354; Moore, Digest, 1: 266.

¹⁰ Mr. Webster, Secretary of State, to Mr. Orma, Peruvian Minister, August 21, 1852, Sen. Ex. Doc. 109, 32d Cong., 1st Sess., p. 12; Moore, 1: 575.

(b) CONTINUITY

The continuity of unoccupied or savage territory with that occupied by a civilized state has been stated as grounds for territorial claims, especially in the modern "hinterland" and "sphere of influence" ¹¹ theories. The colonial charters in America commonly granted jurisdiction "from sea to sea" ¹² and Calhoun in 1844 felt able to assert: "That continuity furnishes a just foundation for a claim of territory, in connection with those of discovery and occupation, would seem unquestionable." ¹³

The present law, in view of the generally accepted Declaration of the West African Conference of 1885, ¹⁴ would seem to justify no claims to territory beyond that effectively controlled, although the adjacent state may justly claim the right of notification, with an option to make good the *constructive* claim by actual occupation.

¹¹ The term "*sphere of influence*" or "*sphere of action*" has been employed in numerous agreements between European Powers to indicate uninhabited or savage regions upon which an option is gained by one Power as against the other. For references to these agreements, of which Great Britain has concluded some twenty with Germany, France, Portugal, Italy, Congo, and Russia since 1885, see Cobbett, Cases, 1: 113. Hall says, "The term *sphere of influence* . . . indicates the regions which geographically are adjacent to or politically group themselves naturally with possessions or protectorates but which have not actually been so reduced into control that the minimum of the powers which are implied in a protectorate can be exercised with tolerable regularity" (Higgins ed., 1917, p. 131). The term *sphere of interest*, on the other hand, has ordinarily been used to refer to particular interests within more or less civilized states, of states already having interests adjacent thereto. In these agreements geographical proximity has commonly been referred to. (*Infra*, notes 83 *et seq.*) On the "*hinterland*" doctrine, see Great Britain, note, June 14, 1890, Parliamentary Papers, Africa, No. 5 (1890), and regulations proposed by Sir Thomas Barclay, International Law and Practice, London, 1917, p. 73.

¹² Papers relating to the Treaty of Washington, 5: 5, 21-22; Moore, 1: 265.

¹³ Mr. Calhoun, Secretary of State, to Mr. Pakenham, British Minister, September 3, 1844, Sen. Ex. Doc. 1, 29th Cong., 1st Sess., p. 149; House Ex. Doc. 2, *ibid.*; Calhoun's Works, 5: 432; Moore, 1: 264.

¹⁴ British and Foreign State Papers, 76: 19 (Arts. 34, 35). The United States has not become a party to this convention. Foreign Relations, 1885, p. 442; Moore, 1: 268. See also, Cobbett, Cases, 1: 108; Westlake, International Law, London, 1904, 1: 104; Hall, International Law, Higgins ed., p. 116.

(c) CONQUEST

The effective occupation of practically all available territory at the present time by civilized or semi-civilized peoples leaves little room for territorial expansion by a theory of propinquity, unless the theory embraces regions thus occupied.^{14a} To assert that it does so, advocates have not been lacking.

President Johnson said, in 1868:

Comprehensive national policy would seem to sanction the acquisition and incorporation into our Federal Union of the several adjacent continental and insular communities as speedily as it can be done peacefully, lawfully, and without any violation of national justice, faith or honor. . . . The conviction is rapidly gaining ground in the American mind that with the increased facilities for intercommunication between all portions of the earth, the principles of free government, as embraced in our Constitution, if faithfully maintained and carried out, would prove of sufficient strength and breadth to comprehend within their sphere and influence the civilized nations of the world.¹⁵

As is indicated by the last sentence, these claims were doubtless closely associated with the thought of an idealistic expansion of the United States, regarded as an embodiment of the principles of federalism and representative government.^{15a} The Monroe Doctrine as a guarantee of the "free and independent condition" of peoples as

^{14a} On rare occasions, territory has been voluntarily ceded on grounds of propinquity to the receiving state. Thus, by a treaty of July 1, 1890, Great Britain ceded Heligoland to Germany, the Marquis of Salisbury explaining that "It was probably retained by this country in 1814, because of its proximity to Hanover, the crown of which was then united to that of England." (Parliamentary Papers, Africa, No. 6 [1890].) By the treaty of April 8, 1904 (Art. 5), Great Britain ceded to France the Iles de Los, opposite Kanakry, the Marquis of Lansdowne explaining that "Their geographical position connects them closely with French Guiana and their possession by any power other than France might become a serious menace to that colony." (Martens, *N. R. G.*, II, 32: 12. See also statement by M. Delcassé, *ibid.*, 32: 48.)

¹⁵ Richardson, *Messages*, 6: 688; Moore, 1: 591. See also the remarks of Senator Douglas in 1845, quoted, A. B. Hart, *The Monroe Doctrine*, Boston, 1916, p. 133.

^{15a} As in John Fiske's well known essay on "Manifest Destiny," *American Political Ideas*, New York, 1885, p. 151.

against "any interposition for the purpose of oppressing them" has readily lent its name to such an ideal, even as a doctrine of the world:

That no nation should seek to extend its polity over any other nation or people, but that every people should be left free to determine its own polity, its own way of development, unhindered, unthreatened, unafraid, the little along with the great and powerful.¹⁶

To a proposal by France and England in 1852 for a joint renunciation of "all intention to obtain possession of the island of Cuba" Secretary Everett refused, for geographical reasons:

The island of Cuba lies at our doors. It commands the approach to the Gulf of Mexico, which washes the shores of five of our States. It bars the entrance of that great river which drains half of the North American continent, and with its tributaries forms the largest system of internal water communication in the world. It keeps watch at the doorway of our intercourse with California by the Isthmus route.¹⁷

In the following year President Pierce took a more positive stand in his inaugural address:

The policy of my Administration will not be controlled by any timid forebodings of evil from expansion. Indeed, it is not to be disguised that our attitude as a nation and our position on the globe render the acquisition of certain possessions not within our jurisdiction eminently important for our protection, if not in the future essential for the preservation of the rights of commerce and the peace of the world. Should they be obtained, it will be through no grasping spirit, but with a view to obvious national interest and security, and in a manner entirely consistent with the strictest observance of national faith.¹⁸

Official declarations of an intention to annex territory by conquest have been rare in diplomatic history, but the thought that territorial propinquity may justify annexations, even by conquest, has doubtless been back of the tendency of all great states to expand their bounda-

¹⁶ *Infra*, note 99.

¹⁷ Mr. Everett, Secretary of State, to Mr. Crampton, British Minister, December 1, 1852, British and Foreign State Papers, 44: 197; Moore, 6: 463.

¹⁸ Richardson, Messages, 5: 198. The Ostend Manifesto of 1854, which seemed to contemplate an extreme application of this policy, was virtually repudiated by the administration. House Ex. Doc. 93, 33d Cong., 2d Sess., p. 131; J. W. Foster, A Century of American Diplomacy, 1901, p. 346.

ries. Such a theory can only be generalized by limiting the right of territorial expansion of each state to natural geographic frontiers, as was done by Professor Burgess:

When a state insists upon the union with it of all states occupying the same geographic unity and attains this result in last resort by force, the morality of its action can not be doubted in sound practical politics, especially if the ethnical composition of the populations of the different states is the same or nearly the same. . . . Who does not see that the further rounding out of the European states to accord still more nearly with the boundaries which nature has indicated would be in the interest of the advancement of Europe's political civilization and of the preservation of the general peace? ¹⁹

Even the limits of natural frontiers have been abandoned by some more recent writers:

Strong, healthy, and flourishing nations increase in numbers. From a given moment they require a continual expansion of their frontiers, they require new territory for the accommodation of their surplus population. Since almost every part of the globe is inhabited, new territory must, as a rule, be obtained at the cost of its possessors — that is to say, by conquest, which thus becomes a law of necessity.

The right of conquest is universally acknowledged.²⁰

Thus, as a justification for territorial expansion, propinquity ranges from a legal doctrine in the case of *res nullius*, through a quasi-legal doctrine in the case of territory occupied by savage or barbarous races, to a doctrine of *real politik* in the case of territory already under civilized or semi-civilized government. The latter doctrine is outside of the law, if indeed it is not directly contrary to it.²¹ Where a claim to nearby territory can be made good by occupation, the law will sanction it; where it can be made good by cession, the law will tolerate it; where only by conquest, the law opposes it.

¹⁹ J. W. Burgess, *Political Science and Comparative Constitutional Law*, Boston 1890, 1: 41. See also W. R. Shepherd, *Proc. Am. Acad. of Pol. Sci.*, 7: 393.

²⁰ F. von Bernhardt, *Germany and the Next War*, 1911, trans. 1914, pp. 21-22.

²¹ At the International American Conference of 1890, the delegates voted unanimously, "That the principle of conquest shall not, during the continuance of the treaty of arbitration, be recognized as admissible under American public law." (*Minutes*, p. 806; *Moore*, 1: 292.) The arbitration plan, however, never became operative. The United States Supreme Court has said, "A war declared by Congress can never be presumed to be waged for the purpose of conquest or the acquisition of territory." *Flemming v. Page*, 9 How. 603 (1850).

2. ECONOMIC PRIVILEGE

(a) MOST-FAVORED-NATION CLAUSES

Customary international law has not attempted to establish equality of economic opportunity, but conventional international law, with the network of most-favored-nation clauses, does quite generally oppose commercial preferences and discriminations.

Article 2 of the American treaty with Tonga of 1886, after providing that most-favored-nation treatment shall be "equally and unconditionally granted" by each of the contracting parties to the other, declares that "the parties hereto affirm the principle of the law of nations that no privilege granted for equivalent or on account of propinquity or other special conditions comes under the stipulations herein contained as to favored nations."

This remarkable declaration was probably suggested by the controversies a few years earlier over the American reciprocity treaty with Hawaii of 1875 and the Navigation Act of 1884. The Hawaiian treaty provided for reciprocal free trade in certain products, and under Article 4 the King of Hawaii agreed not to "make any treaty by which any other nation shall obtain the same privileges, relative to the admission of any articles free of duty hereby secured to the United States." To various demands for tariff reductions equivalent to those granted Hawaii, the United States gave the answer, conforming to its traditional interpretation, that privileges granted for equivalent were not "favours" and hence were not transmissible under most-favored-nation clauses.²² Protests were also made to Hawaii by Great Britain on the strength of the most-favored-nation clause in its treaty with that country of 1851,²³ and by Germany on general grounds. Great Britain finally agreed to modified differential treatment by Hawaii toward the United States, "in consideration of the peculiar circumstances of the commercial relations of the Hawaiian Islands";²⁴

²² Mr. Frelinghuysen, Secretary of State, to Mr. Romero, Mexican Minister, May 2, 1884; Moore, 5: 267; *Bartram v. Robertson*, 122 U. S. 116 (1887); *Whitney v. Robertson*, 21 Fed. Rep. 566.

²³ *British and Foreign State Papers*, 40: 72 (Art. 3).

²⁴ Lord Derby to British representative at Honolulu, January 25, 1878; Mocre, 5: 264.

and Germany, in 1879, ratified a treaty with Hawaii providing for most-favored-nation treatment but adding in a separate article:

Certain relations of proximity and other considerations having rendered it important to the Hawaiian Government to enter into mutual arrangements with the Government of the United States of America by a convention concluded at Washington, the 30th day of January, 1875; the two high contracting parties have agreed that the special advantages granted by said convention to the United States of America, in consideration of equivalent advantages, shall not in any case be invoked in favor of the relations sanctioned between the two high contracting parties by the present treaty.²⁵

Article 14 of the Act of June 26, 1884,²⁶ provided that vessels entering "any port of the United States from any foreign port or place in North America, Central America, the West Indies, the Bahamas, the Bermudas, the Hawaiian Islands, or Newfoundland," should pay a three-cent tonnage tax, with a maximum of fifteen cents a year, instead of the usual six cent tax with a thirty cents maximum. Various European Powers protested under most-favored-nation clauses. The United States defended the law, citing an opinion of the Attorney General:

The discrimination as to tonnage duty in favor of vessels sailing from the regions mentioned in the Act, and entered in our ports, is, I think, purely geographical in character, inuring to the advantage of *any* vessel of *any* Power that may choose to fetch and carry between this country and any port embraced by the fourteenth section of the Act. I see no warrant, therefore, to claim that there is anything in "the most-favored-nation" clause of the treaty between this country and the Powers mentioned that entitles them to have the privileges of the fourteenth section extended to their vessels sailing to this country from ports outside of the limitation of the Act.²⁷

The law was later modified to admit all vessels to the lower rate on conditions of reciprocity, but it does not seem clear that the United States repudiated the principle that geographical situation is an ade-

²⁵ British and Foreign State Papers, 71: 590.

²⁶ Act of June 26, 1884, 23 Stat. 57.

²⁷ Acting Attorney General Maury, September 19, 1885, 18 Op. 260; North German Lloyd v. Heddon, 43 Fed. 17. For entire history of the case see Report of Mr. Bayard, Secretary of State, June 14, 1889, House Ex. Doc. 74, 50th Cong., 2d Sess.; Moore, 5: 288.

quate justification for discrimination. In fact, in its protest Germany had admitted a limited application of this principle:

It can not be doubted, it is true, that on grounds of a purely local character, certain treaty stipulations between two Powers, or certain advantages autonomically granted, may be claimed of third states not upon the grounds of a most-favored-nation clause. Among these are included facilities in reciprocal trade on the border between states whose territories adjoin each other. It is, however, not to be doubted that the international practice is that such facilities, not coming within the scope of a most-favored-nation clause, are not admissible save within very restricted zones.²⁸

The principle was again asserted in 1904 in a report by Mr. John Bassett Moore, affirming that it would not be contrary to most-favored-nation clauses for Congress to provide a special tariff for Cuba:

We have in this case of the United States and Cuba a remarkable example of those special and exceptional relations, physical and political, which, not being estimable simply in terms of commerce, are universally recognized as the surest foundation for the mutual exchange of exclusive advantages; relations, moreover, which are expressed in valid public acts whose legal effect all nations have acknowledged.²⁹

(b) CANAL TOLLS

The exemption of Panama public vessels from all tolls in the Panama Canal is another case of special navigation privileges justified by peculiar geographical and political relations. This exemption was granted under Article 19 of the Hay-Bunau-Varilla Treaty of 1903, and was asserted by Great Britain to conflict with Article 3 of the Hay-Pauncefote Treaty of 1901, which provided that "the canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality so that there shall be no discrimination against any such nation, or its citizens or subjects in respect of the conditions or charges of traffic or otherwise." To this

²⁸ Mr. Alvensleben to Mr. Bayard, February 16, 1886; Bayard's Report, *supra*, note 27, pp. 3, 19; Moore, 5: 290.

²⁹ J. B. Moore, Opinion upon the question whether Congress can pass a special tariff act for Cuba without violating the most-favored-nation clause in treaties with other countries, January 14, 1902, p. 14, cited in this JOURNAL, 3: 58 (note).

objection Secretary Knox replied in 1913:³⁰ "The United States has always asserted the principle that the status of the countries immediately concerned by reason of their political relation to the territory in which the canal was to be constructed was different from that of all other countries."

A similar exemption had been included in the proposed Hay-Herran Treaty of 1903 with Colombia (Article 17),³¹ and again in the proposed tripartite treaties with that country and Panama of 1909 (Article 2).³² The justice of this exemption was officially admitted by Great Britain in view of the "entirely special and exceptional position of Colombia toward the canal and the title thereto."³³

Practice seems to indicate that geographical propinquity may, in some cases, furnish a ground for special commercial privileges even in conflict with treaties providing for equality of treatment. It should be noted, however, that in most of the cases mentioned the states in question were also bound by peculiarly close political relations.

(c) SERVITUDES

Other economic privileges in neighboring territory have been claimed to exist under the name of servitudes. While it is frequently maintained that servitudes can only rest upon contract, during the course of the oral argument in the North Atlantic Fisheries Arbitration of 1909, Mr. Justice Gray, one of the arbitrators, remarked:

There is a certain class of so-called servitudes which I believe exists between nations. They call them servitudes, perhaps, for want of a better name. They exist by reason of neighborhood, propinquity, and certain concessions that might be attributed to comity, that do not rest on contract.³⁴

³⁰ Mr. Knox, Secretary of State, to Mr. Laughlin, U. S. Chargé d'Affaires at London, January 17, 1913, *Diplomatic History of the Panama Canal*, 63d Cong., 2d Sess., Sen. Doc. 474, p. 95.

³¹ *Ibid.*, p. 284.

³² *Ibid.*, p. 318.

³³ Mr. Bryce, British Ambassador, to Mr. Bacon, February 24, 1909, *ibid.*, p. 81.

³⁴ Proceedings, North Atlantic Coast Fisheries Arbitration, Sen. Doc. 870, 61st Cong., 3d Sess. (Oral Argument of Sir William Robson), 11: 1667. The decision of the Hague Court in this case against the contention of the United States that fishing rights in Canadian territorial waters constituted an international ser-

To the same effect, Hall classifies as servitudes: "Customary rights over forests, pastures, and waters for the benefit of persons living near a frontier."³⁵ The generally recognized right of joint navigation in boundary rivers might be considered in this category.³⁶

(d) TRADE OF NEUTRALS

The geographical relation of neutral states in time of war has been asserted by belligerent sea Powers to justify peculiar measures of commercial restriction. Thus, by the doctrine of continuous voyage the commerce of states near to an enemy state may be subjected to onerous restrictions from which more fortunately situated neutrals are exempt. The right to capture and condemn goods of contraband nature bound to a neutral port where the ultimate destination is enemy has been generally recognized.³⁷ The doctrine of continuous voyage has also been invoked to permit of the virtual extension of commercial blockades to neutral coasts adjacent to blockaded enemy coasts,³⁸ and, under retaliatory prohibitions, to subject all the trade of such neutrals to supervision in order to detain goods of presumed enemy origin or destination. Thus, the French decree of March 13, 1915, provided:

All articles and merchandise whatsoever, shipped either direct or in transit to Germany or to a country close to Germany, whenever the documents accompanying said articles or merchandise shall not show proof that their ultimate and true destination is in a neutral country, shall be considered as merchandise destined for Germany.³⁹

itude, holding that such a servitude could be recognized "only on the express evidence of an international contract," indicates that such customary neighborhood servitudes, if they exist at all, would have to be very strictly interpreted. *Ibid.*, 1: 76; this JOURNAL, 4: 958.

³⁵ W. E. Hall, *International Law*, Higgins ed. p. 166; Moore, 2: 18.

³⁶ The *Twee Gebroeders*, 3 C. Rob. 336; The *Appollon*, 9 Wheat. 362; Cooley v. Golden, 52 Mo. App. 52, Scott, 129, Cobbett, Cases, 1: 120.

³⁷ The *Peterhoff*, 5 Wall. 28 (1866); Delagoa Bay Cases, British Parliamentary Papers, 1900, Africa No. 1; Moore, 7: 739; Cobbett, Cases, 2: 473.

³⁸ The *Springbok*, 5 Wall. 1 (1866). In this case questions of contraband were also involved. See also British Memorandum, April 24, 1916, sec. 33, U. S. White Book, No. 3, p. 75; this JOURNAL, Special Supp., 10: 134.

U. S. White Book, No. 1, p. 67. See also British Order in Council, March 11, 1915, *ibid.*, p. 66; this JOURNAL, Spec. Supp., 9: 110, 113.

Vessels trading with "ports of a neutral country affording means of access

The presumptions with reference to trade of neutral states near to the enemy, considered sufficient to justify special restrictions upon such trade, were emphasized in the British note to the United States of April 24, 1916:

Moreover, the fact that a neutral country adjacent to the enemy territory is importing an abnormal quantity of supplies or commodities of which her usual imports are relatively small, of which the enemy stands in need and which are known to pass from that neutral country to the enemy, is by itself an element of proof on which the prize court would be justified in acting, unless it is rebutted by evidence to the contrary.⁴⁰

These extreme claims have not been generally accepted by neutrals,⁴¹ but the fact that they were made and acted upon by belligerents shows that territorial position may subject particular neutral states to peculiar responsibilities.

3. EXERCISE OF JURISDICTION

Territorial propinquity as the foundation for a limited extra-territorial jurisdiction has been given some recognition in practice, especially as a justification for measures intended to preserve tranquility and an orderly administration in neighboring states, and among some writers it has been mentioned as a right, *droit de voisinage*. In his *Dictionnaire de droit international*, Calvo says under the head *Voisinage*:

Relations between persons by reason of the proximity of their homes or their property. This relation exists also between adjacent states. The first rule to observe between neighboring states is that one refrain from trespassing on the territory of the other. Thus it becomes necessary that they clearly determine the boundary which separates them. However, neighboring states admit or tolerate reciprocally certain exceptional measures of police, etc., the execution

to the enemy territory" are to be brought in for examination, under the British Order in Council of February 16, 1917. See also French decree, July 7, 1916 (Art. 3), this JOURNAL, Spec. Supp. 10: 11; Portuguese decree, September 8, 1916 (Art. 4,b), Naval War College, International Law Documents, 1917, p. 202.

⁴⁰ U. S. White Book, No. 3, p. 74, sec. 31; this JOURNAL, Spec. Supp. 10: 133.

⁴¹ Declaration of London, 1909, Art. 19; Mr. Lansing to Mr. Page, October 21, 1915, secs. 19, 21, 24, U. S. White Book, No. 3, p. 31 *et seq.*; this JOURNAL, Spec. Supp., 10: 80.

of which can take place spontaneously (*instinctivement*) on the territory of one or the other without the intervention of the respective local authorities. Such are, for example, measures taken for the suppression of violations of agricultural, forest, game or fishing laws, on the frontier zone or violations of customs regulations.

(a) SUPPRESSION OF INJURIOUS AGENCIES

An illustration of the exercise of such special neighborhood jurisdiction may be found in General Jackson's invasion of Florida, during the Seminole war of 1818, which Secretary Adams attempted to justify as against Spain's protest:

After a full and deliberate examination of these proofs, the President deems them irresistibly conclusive that the horrible combination of robbery, murder, and war, with which the frontier of the United States bordering upon Florida has for several years past been visited, is ascribable altogether to the total and lamentable failure of Spain to fulfill the fifth article of the treaty of 1795 by which she stipulated to restrain by force her Indians from hostilities against the citizens of the United States. . . . It is therefore to the conduct of her own commanding officers that Spain must impute the necessity under which General Jackson found himself of occupying the places of their command.⁴²

At about the same time Secretary Adams was under the necessity of justifying the American operations at Amelia Island:

When an island is occupied by a nest of pirates, harassing the commerce of the United States, they may be pursued and driven from it, by authority of the United States, even though such island were nominally under the jurisdiction of Spain, Spain not exercising over it any control.⁴³

In a later note, the "immediate neighborhood" of the island to the United States was mentioned as an additional justification.⁴⁴

In the frequent annoyance from marauding Indians on the Mexican border the United States has insisted on its right to pursue them over

⁴² Mr. Adams, Secretary of State, to Don Luis de Oris, Spanish Minister, November 30, 1818, American State Papers, Foreign Relations, 4: 545; Moore, 2: 405.

⁴³ Mr. Adams, Secretary of State, to Mr. Hyde de Neuville, French Minister, January 27, 1818; Moore, 2: 408.

⁴⁴ *Ibid.*, March 19, 1818; Moore, 2: 80.

the border, but it has at the same time admitted a reciprocal right on the part of Mexico.⁴⁵ In 1836 Secretary Forsyth wrote to the American Minister in Mexico:

You will perceive that Mr. Gorostiza, in his conference with me, distinctly admitted our right, in the event of hostility to the United States by Mexican Indians, to invade the territory of Texas, either to prevent intended injury or to punish actual depredation. . . . You will find no difficulty in showing to the Mexican Government that it rests upon principles of the law of nations, entirely distinct from those on which war is justified—upon the immutable principles of self-defense—upon the principles which justify decisive measures of precaution to prevent irreparable evil to our own or to a neighboring people.⁴⁶

Later such operations have been carried on under specific agreements,⁴⁷ as was the intention in the pursuit of Villa in Mexican territory by American troops in the summer of 1916.⁴⁸

(b) PACIFICATION IN THE AMERICAS

Other cases of chronic disorder or bankruptcy thought to demand more general intervention for purposes of pacification have been justified by principles of proximity. As to Cuba, Secretary Olney said in 1896:

The people of the United States . . . are interested in any struggle anywhere for freer political institutions, but necessarily and in special measure in a struggle that is raging almost in sight of our shores. . . . The interest of the United States in the existing situation in Cuba yields in extent only to that of Spain herself, and has led many good and honest persons to insist that intervention to terminate the conflict is the immediate and imperative duty of the United States.⁴⁹

⁴⁵ Mr. Marcy, Secretary of State, to Mr. Almonte, Mexican Minister, February 4, 1856; Moore, 2: 421.

⁴⁶ Mr. Forsyth, Secretary of State, to Mr. Ellis, Minister to Mexico, December 10, 1836, British and Foreign State Papers, 26: 1419; Moore, 2: 420.

⁴⁷ Annual protocol, 1882, revived until 1885, again in 1890, 1892, 1896, the last to remain in force until "Kid's band of hostile Indians shall be wholly exterminated or rendered obedient to one of the two governments."

⁴⁸ Mr. Lansing, Secretary of State, to Mr. Silliman, United States Consul in Mexico, March 13, 1916, this JOURNAL, Supp., 10: 183.

⁴⁹ Mr. Olney, Secretary of State, to Mr. Dupuy de Lome, Spanish Minister, April 4, 1896, Foreign Relations 1897, p. 540; Moore, 6: 108.

In 1898 President McKinley recommended war against Spain, saying that:

Such a conflict waged for years in an island so near us and with which our people have such trade and business relations . . . is a constant menace to our peace and compels us to keep on a semi-war footing with a nation with which we are at peace.⁵⁰

Any unpleasant implications as to the motive of the United States were avoided by the Joint Resolution of Congress of April 20, 1898, which declared:

The United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.⁵¹

Four years later, President Roosevelt showed that proximity still gave the United States a special interest:

Cuba lies at our doors, and whatever affects her for good or for ill affects us also. So much have our people felt this that in the Platt Amendment we definitely took the ground that Cuba must hereafter have closer political relations with us than with any other Power. Thus in a sense Cuba has become a part of our international political system.⁵²

The special interest of the United States in Mexico was asserted by Secretary Seward in 1861:

Mexico being a neighbor of the United States on this continent, and possessing a system of government similar to our own in many of its important features, the United States habitually cherish a decided good will towards that Republic, and a lively interest in its security, prosperity, and welfare.⁵³

In the Mexican troubles since 1912, the policy of the administration was stated by President Wilson in January, 1916:

⁵⁰ President McKinley, special message, April 11, 1898, Foreign Relations, 1898, p. 750; Moore, 6: 220.

⁵¹ 30 Stat. 738; Moore, 6: 226.

⁵² President Roosevelt, message, December 2, 1902, Foreign Relations, 1902, p. xx.

⁵³ Mr. Seward, Secretary of State, to Messrs. Tassara, Mercier, and Lord Lyons, December 4, 1861, House Ex. Doc. 100, 37th Cong., 2d Sess., p. 187; British and Foreign State Papers, 62: 394; Moore, 6: 487.

America has always stood resolutely and absolutely for the right of every people to determine its own destiny and its own affairs. I am absolutely a disciple of that doctrine and I am ready to do that thing and observe that principle in dealing with the troubled affairs of our distressed neighbor to the south.⁵⁴

Consequently, reference to proximity as a ground of intervention has been studiously avoided; in fact, after the dispatch of the expedition in pursuit of Villa in 1916, Secretary Lansing stated that it was "deliberately intended to preclude the possibility of intervention."⁵⁵ Yet in a note of June 20, 1916,⁵⁶ he could not avoid calling attention to the fact that "bandits have been permitted to roam at will through the territory contiguous to the United States and to seize without punishment or without effective attempt at punishment the property of Americans, . . ." The diplomatic exchanges with Mexico of the past few years are thus an illustration of the interest which territorial propinquity may thrust upon a state, rather than of attempts to justify such interests by appeal to territorial propinquity.

To some extent the same is true of the American policy in the Caribbean. The United States has considered itself compelled to assure order in this region as the price of European nonintervention. To this effect President Roosevelt said in 1904:

We would interfere with them only in the last resort, and then only if it became evident that their inability or unwillingness to do justice at home and abroad had violated the rights of the United States or had invited foreign aggression to the detriment of the entire body of American nations.⁵⁷

The rapid progress of the policy of "financial rehabilitation" and quasi-protectorates in the Caribbean region can not be accounted for entirely by such forced action, and the doctrine of proximity has been fre-

⁵⁴ Speech in Aeolian Hall, New York, January 27, 1916, quoted in M. Calero, *The Mexican Policy of President Wilson*, 1916, p. 89.

⁵⁵ Statement of Secretary Lansing, March 13, 1916, this *JOURNAL*, Supp., 10: 183; *American Year Book*, 1916, p. 79.

⁵⁶ Secretary Lansing to Mr. Anguilar, Mexican Chargé, June 20, 1916, this *JOURNAL*, Supp., 10: 211; *American Year Book*, 1916, p. 82.

⁵⁷ Annual message, December 6, 1904, *Foreign Relations*, 1904, p. xlii; Moore, 6: 597.

quently alluded to, especially by President Roosevelt. Referring to the Panama Canal in 1905 he said: "As a mere matter of self-defense, we must exercise a close watch over the approaches to this canal; and this means that we must be thoroughly alive to our interests in the Caribbean Sea."⁵⁸

That special interests of proximity have not been confined to the territory to the south of the United States is indicated by the statement of Secretary Seward in 1867: "British Columbia, by whomsoever possessed, must be governed in conformity with the interests of her people and of society upon the American continent;"⁵⁹ and by the resolution of the House of Representatives, March 27, 1867: "The people of the United States can not regard the proposed confederation of the provinces on the northern frontier of this country without extreme solicitude."⁶⁰ Even so far as the Hawaiian Islands have these special interests extended. In 1842 Secretary Webster said: "The United States are more interested in the fate of the islands and of their government than any other nation can be."⁶¹

In a Senate resolution of August 2, 1912, proposed by Senator Lodge in view of the proposed sale of a concession on Magdalena Eay, Lower California, to certain Japanese subjects, it was asserted that the "possession" of territory in the "American Continent . . . so situated that the occupation thereof for naval or military purposes might threaten the safety or communications of the United States" by "any corporation or association which has such relation to another government, not American, as to give that government practical power of control for national purposes" "could not be seen without grave concern" by the United States.⁶² This seemed to assume that the United States had an ultimate veto of the disposal of strategically located territory in its neighborhood, a doctrine which had been even

⁵⁸ Annual message, December 5, 1905, Foreign Relations, 1905, p. xxxiii.

⁵⁹ A. B. Hart, *The Monroe Doctrine*, Boston, 1916, p. 155.

⁶⁰ Resolution, House of Representatives, March 27, 1867, *Dip. Cor.* 1867, 1: 76; *Cong. Globe*, 40th Cong., 1st Sess., p. 392.

⁶¹ Secretary Webster to Hawaiian Agents, December 19, 1842, *House Ex. Doc.* 35, 27th Cong., 3d Sess.; *Foreign Relations*, 1894, App. II, p. 44; *Moore*, 1: 476.

⁶² *Cong. Rec.*, 48: 10045-10047; *this JOURNAL*, 6: 938.

introduce every administrative, judicial, economic, financial, and military reform necessary for the good government of the empire, and to make new regulations, and to modify existing regulations made necessary by these reforms," and "to extend her control and her protection." In 1912 this was followed by a treaty between France and Morocco⁷³ by which the latter became a protectorate.

(d) PACIFICATION IN THE BALKANS

In a similar sense has Austria invoked territorial propinquity to justify special interests in the Balkans. At the eighth meeting of the Congress of Berlin of 1878, Count Andrassy spoke as follows:

All the governments are willing to recognize that Austria-Hungary in the capacity of an adjacent Power is interested more than any other Power in the regulation of the state of affairs in Bosnia and Herzegovina.

Interested primarily as an adjacent Power, Austria-Hungary is obliged to declare freely and openly that its most vital interests do not permit it to accept any solution of the Bosnia-Herzegovina question which will be apt to delay the permanent pacification of the said provinces and to prevent the alteration of conditions which have brought about such grave danger to the peace of Europe and created for Austria-Hungary — by imposing great sacrifices and grave material losses — a situation so intolerable that she can not permit its continuance.⁷⁴

On the suggestion of Lord Salisbury,⁷⁵ one of the British plenipotentiaries, the Powers agreed and provided in Article 25 of the Treaty of

⁷³ *Ibid.*, 6: 207. Italian interests in Tripoli were supported on similar grounds. In her ultimatum to Turkey of September 28, 1911, after referring to her representations "throughout a long series of years" requesting that the disorder and neglect and lack of progress in Tripoli and Cyrenaica might come to an end, Italy said, "This transformation, which is required by the general exigencies of civilization, constitutes, so far as Italy is concerned, a vital interest of the first order, by reason of the small distance separating these countries from the coast of Italy." *Ibid.*, 6: 11.

⁷⁴ British Parliamentary Papers, Turkey, No. 39 (1878), pp. 113-114; British and Foreign State Papers, 69: 947, 950.

⁷⁵ *Ibid.*

Berlin⁷⁶ that Austria-Hungary should administer Bosnia and Herzegovina and maintain military garrisons in Novi Bazar. In dispatching troops to give effect to this clause, the Austrian Government proclaimed to the inhabitants of the districts: "The Emperor and King could no longer passively witness the violence and the discord which reigned in the vicinity of his provinces any more than the poverty and the misery which knocks at the doors of his states."⁷⁷

In more recent pronouncements of policy in the Balkans, Austria has referred to "vital interests" rather than proximity, though Count Tisza, speaking before the Hungarian delegations in 1913, left no doubt that special interests existed.⁷⁸

Austria-Hungary desires neither territorial acquisitions, nor a protectorate, nor privileges in the Balkans. Nevertheless she is and will remain interested there and she will never tolerate those groups in opposition to her interests which remain identical with the interests of the Balkan peoples.

The Austro-Hungarian interests in the Balkans are expressed in a single phrase; it is to know that the states of this peninsula continue to possess a true independence which will be neither influenced nor touched in any part. We will consider the maintenance of this principle fundamental to our vital interests.

Count Berchtold had spoken to the same effect in 1912 before the same body:

Our policy in the Balkans is not a policy of conquest. But that does not mean that we are not interested in the events which occur in that region. We have in the Balkan Peninsula vital interests and we are resolved to defend them whatever happens.⁷⁹

A writer who discusses Austro-Hungarian interests in the Balkans as founded on the *droit de voisinage*, said in 1914:

In claiming respect for "des intérêts vitaux" of the Monarchy, the Austro-Hungarian press did not cease making frequent allusions to this "droit de voisinage" as it had been interpreted and exercised

⁷⁶ Original, British and Foreign State Papers, 69: 758; English translation, British Parliamentary Papers, Turkey, No. 44 (1878); Annual Register, 1878, p. 226.

⁷⁷ British and Foreign State Papers, 69: 1107.

⁷⁸ *Le Temps*, June 20, 1913, quoted by J. Pericles Polyvios, *L'Albanie et la Réunion d'Ambassadeurs à Londres*, Paris, 1914, p. 141.

⁷⁹ *Le Temps*, October 12, 1912, quoted Polyvios, *op. cit.*, p. 53.

by France in reference to Morocco. The press of the Monarchy drew from it arguments to justify the conduct of the cabinet of Vienna.

The Balkan countries during the last years were to the eyes of Austrians what Morocco was for France and Spain, a country destined by its geographic situation not to pass from their zone of influence and to fall gradually like a ripe fruit under their tutelage.⁸⁰

In the exchanges between Serbia and Austria-Hungary immediately preceding the European War, special relations due to proximity are continually referred to. Thus, in her note of March 31, 1909, recognizing the annexation by Austria-Hungary of Bosnia and Herzegovina, Serbia agreed "to live in the future on good neighborly terms with Austria-Hungary," and in the ultimatum of July 22, 1914, Serbia was ordered to express her regret that Serbian officers "have compromised the good neighborly relations" to which she was pledged. In her official justification of this ultimatum, Austria-Hungary pointedly referred to Serbia as "the neighboring state." In replying to the fifth demand, requiring her "To accept the coöperation in Serbia of representatives of the Austro-Hungarian Government in the suppression of the subversive movement directed against the territorial integrity of the Monarchy," Serbia "declares that it will admit such collaboration as agrees with the principles of international law, with criminal procedure, and with good neighborly relations." In objecting to this form of accepting her demand, Austria stated that "international law and the penal code governing criminal proceedings have nothing whatever to do with this question," but, not mentioning the third Serbian proviso, leaves one to assume that possibly "good neighborly relations" do relate to the question.⁸¹

(e) SPHERES OF INTEREST

The *droit de voisinage* as applied by the United States in the Caribbean, by France in Morocco, and by Austria in the Balkans, may be considered as an application of the doctrine of "spheres of interest." Such spheres have been distinguished from "spheres of influence" as being the object of "agreements which allocate certain areas already

⁸⁰ Polyvios, *op. cit.*, pp. 54, 50.

⁸¹ Austro-Hungarian Red Book, 1914, Docs. Nos. vii, viii, xxv, xxxiv.

occupied by states more or less civilized as spheres of influence or interest between Powers having already interests *adjacent* thereto." ⁸² The doctrine is further illustrated by the action of certain European Powers in China and Persia. In these cases, also, territorial propinquity has been referred to as a justification. Thus, in an exchange of notes of April 28, 1899,⁸³ between Great Britain and Russia, defining spheres of railroad interests in China, the two countries take "into consideration the economic and geographic gravitation of certain parts of that empire," and in a treaty of August 31, 1907,⁸⁴ between the same Powers, the preamble states in reference to Persia:

Considering that each of them has, for reasons of a geographic and economic order, a special interest to maintain peace and order in certain provinces of Persia contiguous or neighboring to the Russian frontier, on the one part, and to the frontier of Afghanistan and of Baluchistan, on the other. . . .

In reference to Tibet, in the same treaty:

The Governments of Great Britain and of Russia recognize the suzerain rights of China in Tibet, and, considering that in consequence of the geographic situation, Great Britain has a special interest to see the present régime of foreign relations of Tibet integrally maintained.

The Anglo-Japanese alliance treaty of September 27, 1905, affirming that of January 30, 1902, after recognizing the "paramount interest" of Japan in Korea, states:

Art. 4. Great Britain having special interests in all that concerns the security of the Indian frontier, Japan recognizes her right to take such measures in the proximity of that frontier as she may find necessary for safeguarding her Indian possessions.

These provisions were omitted in the revised treaty of July 13, 1911. The Franco-Japanese agreement of June 10, 1907, is based on "a special interest" of the signatories "to have the order and pacific state of things preserved, especially in the regions of the Chinese Empire adjacent to

⁸² *Supra*, note 11; Cobbett, *op. cit.*, 1: 114.

⁸³ British and Foreign State Papers, 91: 91.

⁸⁴ *Ibid.*, 100: 555; this JOURNAL, Supp., 1: 400.

the territories where they have the rights of sovereignty, protection or occupation." ^{84 a}

Interest in territory adjacent to certain of her African possessions was made the basis of a protest by Germany in 1894. Great Britain had leased from the Congo State a strip of territory, adjacent to German East Africa, extending from Lake Tanganyika to Albert Edward Nyanza, to be under British sovereignty as long as Congo remained under the sovereignty of the King of the Belgians.⁸⁵ The British purpose was asserted to be nonpolitical, but to provide a means of connecting her East African possessions with the Zambesi region by railroad and telegraph. However, it seemed to Great Britain "just and reasonable that in regard to territory lying in such close proximity to her frontier, . . . Germany should receive every assurance that due regard would be paid to her rights and interests." Germany was, therefore, requested to give her consent. This, however, Germany refused, and protested that the lease would be "in effect equivalent to a complete cession in view of the indefiniteness of its duration and the impossibility of foreseeing its extension," adding:

As far back as the negotiations which led to the conclusion of the agreement between Germany and Great Britain of the 1st July, 1890, Germany rejected the wish of Great Britain to have such a strip assigned to her because her (Germany's) political position would thereby have been deteriorated and her direct trade communication with the Congo State would have been interrupted. Germany will equally be put in the disadvantageous position under all circumstances whether the strip leased to Great Britain is contiguous to the German frontier or is some kilometers distant from it.⁸⁶

Considering that she was not yet ready to undertake actual construction of the railroad contemplated, although maintaining her abstract right, Great Britain withdrew the objectionable clause by agreement with Congo.⁸⁷

^{84 a} Japanese Year Book, 1916 pp. 569, 571. See also the Russo-German agreement on Persia and the Bagdad Railway, August 19, 1911, this JOURNAL, Supp., 6: 120.

⁸⁵ Agreement, May 12, 1894, Art. 3, British and Foreign State Papers, 86: 19.

⁸⁶ British Parliamentary Papers, Africa, No. 5 (1894).

⁸⁷ Agreement, June 22, 1894, British and Foreign State Papers, 86: 23. Hall (International Law, Higgins ed., p. 91) sustains the British position from a legal standpoint.

(f) PREFERENCE TREATIES

Closely related to "sphere of interest" treaties, on the one hand, and "protectorate" treaties, on the other, are so called "preference" treaties. They differ from the former in that the sovereign of the territory in question is itself one party to the treaty, and from the latter in that the degree of responsibility for the maintenance of order implied by "protection" is not assumed. The privileges granted by "preference" treaties bear some resemblance to servitudes, but are of a less specific character.

By an agreement of April 23, 1884, the International Association of the Congo agreed "to give to (France) the right of preference (in certain territory adjacent to French colonies) if from unforeseen circumstances, the association should be led some day to alienate its possession." France accepted the assurance as "intended to strengthen our cordial and *neighborly* relations in the Congo." This right of preference was recognized by Belgium in its treaties of February 5, 1895, and December 23, 1908.^{87a}

The relation of such treaties to territorial propinquity is well illustrated by the British agreement with Siam of March 10, 1909, by which the latter submitted to certain limitations upon the use of portions of her territory, "in view of the position of British possessions on the Malay Peninsula and of the contiguity of the Siamese Malay provinces with British protected territory,"^{87b} and by the Sino-Japanese treaties of May 25, 1915, resulting from the twenty-one demands of January 18, 1915. That respecting the Province of Shantung purports to have as one object "to strengthen the relations of amity and good *neighborhood* existing between the two countries."^{87c}

^{87a} This JOURNAL, Supp., 3: 6, 69, 294.

^{87b} Parl. Pap., Siam, No. 1 (1909). A similar agreement was made with France with reference to territory bordering French possessions. *Journal de droit international privé* (Clunet), 1910, p. 78.

^{87c} This JOURNAL, Supp., 10: 5; Japanese Year Book, 1916, p. 583; American Year Book, 1915, p. 112. Other preference treaties are those of the United States with Cuba (1903), Panama (1903), Santo Domingo (1916), and Hayti (1916), giving the United States an exclusive right of intervention in certain contingencies, and with Nicaragua (1916), giving the United States an option on any possible canal route; that of Great Britain with Tibet (September 7, 1904, confirmed by China, April 27, 1906, this JOURNAL, Supp., 1: 78, 80); and those of Japan with Korea from

Insurrection and disorder are likely to spread, in which case adjacent states would suffer first. Measures of pacification by such states may, therefore, be indirectly dictated by self-preservation. It can not be overlooked, however, that the actual effect of such measures is frequently territorial expansion. From intervention for pacification, to protection and finally annexation, has been the ordinary progress when the doctrine of territorial propinquity is thus invoked.

States of full status in the family of nations are generally very jealous of their territorial jurisdiction. Great Britain, for instance, when approached in 1883 with reference to an agreement for the reciprocal pursuit of Indians across the Canadian border, "knew of no circumstances which would warrant the adoption of such an exceptional measure as the agreement between the United States and Mexico."⁸⁸ During the American Civil War, after the raid in St. Albans, Vermont, orders which had been given by General Dix "to shoot down the perpetrators and . . . if necessary with a view to their capture, to cross the boundary between the United States and Canada," were disapproved by the President and revoked.⁸⁹ After Texan troops had crossed the United States border in 1839 to punish certain Indians, the American *chargé d'affaires* was instructed⁹⁰ to "promptly and in strong terms remonstrate" against the "insult and outrage." In like manner, both Mexico and the United States have on occasion protested against arrests of malefactors from one, made in the territory of the other; in one case, a question arising over the arrest by an American officer of one Garcia while lying halfway across the boundary line in Nogales.⁹¹

1894 to 1907, leading to annexation by the treaty of August 22, 1910 (this JOURNAL, Supp., 1: 213, 397, Japanese Year Book, 1916, p. 555). Although territorial propinquity is not specifically mentioned in all of these treaties, its practical influence is obvious.

⁸⁸ Mr. West, British Minister to Mr. Frelinghuysen, Secretary of State, August, 5, 1883, Foreign Relations, 1883, p. 527; Moore, 2: 440.

⁸⁹ General Orders, 1864, Nos 97, 100; Moore, 2: 368.

⁹⁰ Mr. Forsyth, Secretary of State, to Mr. LaBranche, Chargé d'Affaires to Texas, January 8, 1839, Moore, 2: 363.

⁹¹ Mr. Olney, Secretary of State, to Mr. Romero, Mexican Ambassador, December 1, 1896, Foreign Relations, 1896, pp. 446 *et seq.*; Moore, 2: 380. See also Moore, 2: 371 *et seq.*, and numerous references to Foreign Relations there given.

As a question of law, it may be doubted whether jurisdictional rights in foreign territory can be justified from territorial propinquity unless there is also necessity of self-defense, which, according to the generally accepted phrase of Secretary Webster in the *Caroline* case, must be "instant, overwhelming, and leaving no choice of means and no moment for deliberation."⁹²

4. SPECIAL POLITICAL INTERESTS

(a) THE MONROE DOCTRINE

A special political interest in nearby states is no new doctrine to Americans. As early as 1811 Madison anticipated Monroe in a message to Congress,⁹³ and his words were repeated in a resolution of January 15, 1811:

The United States could not see, without serious inquietude, any part of a neighboring territory in which they have, in different respects, so deep and so just a concern, pass from the hands of Spain into those of any other foreign Power.⁹⁴

In the Monroe Doctrine itself, "the neighboring territory" with which the United States has an especial concern was asserted to embrace the land of the entire hemisphere:

With the movements in this hemisphere we are, of necessity, more immediately connected, and by causes which must be obvious to all enlightened and impartial observers.⁹⁵

Specifically, the doctrine stated that any future colonization of the American continents by European Powers would involve the "*rights and interests* of the United States." It further asserted that an "extension of the European political system" to this hemisphere was "*dangerous to the peace and safety* of the United States" and any "interposition for the purpose of oppressing" or "controlling the destiny"

⁹² Mr. Webster, Secretary of State, to Mr. Fox, British Minister, April 24, 1841, Webster's Works, 6: 250; Moore, 2: 412.

⁹³ Special message, January 3, 1811, American State Papers, Foreign Relations, 3: 571.

⁹⁴ 3 Stat. 471; Moore, 6: 372.

⁹⁵ President Monroe, annual message, December 2, 1823, American State Papers, Foreign Relations, 5: 250; Moore, 6: 402.

of the newly independent American states would be viewed as the "manifestation of an *unfriendly disposition* towards the United States." Stronger expressions were used in connection with the liberty and independence of the American states than with their territory, and in may be inferred that it was with the former that the United States was primarily concerned.⁹⁶ This inference is strengthened by Secretary Olney's interpretation of the doctrine in 1895. He said:

The people of the United States have a vital interest in the cause of popular self-government. . . . It is in that view more than in any other that they believe it not to be tolerated that the political control of an American state shall be forcibly assumed by any European Power.⁹⁷

With this view, the appellation of an enlarged Declaration of Independence⁹⁸ is not inappropriate, nor was President Wilson perverting the doctrine in ignoring its original geographical extent and regarding its essence as the right of a people "to determine its own polity, its own way of development, unhindered, unthreatened, unafraid."⁹⁹

(b) FRENCH POLICY

The appeal to territorial propinquity as a justification for a special interest in the independence of foreign states has not been confined to the United States. France, which followed the United States by a decade with its Declaration of Independence, did the same with its Monroe Doctrine. Guizot, speaking of the foreign policy of Louis Philippe, says:

Side by side with the principle of respect for treaties, he laid down and carried out another equally important, — respect for the independence of the states immediately contiguous to France, and which form her girdle, — Belgium, Switzerland, Piedmont, and Spain. M.

⁹⁶ A. B. Hart (*op. cit.*, p. 36E), in his interpretation of the doctrine, puts this aspect first. See, also, J. W. Foster, *op. cit.*, p. 438, *et seq.*

⁹⁷ Mr. Olney, Secretary of State, to Mr. Bayard, Ambassador to England, July 20, 1895, *Foreign Relations* 1895, 1: 557; Moore, 6: 552-553.

⁹⁸ J. W. Foster, *op. cit.*, p. 438 *et seq.*

⁹⁹ Address of President Wilson to the Senate, January 22, 1917, *Cong. Rec.* 54: 1743. See, also, addresses by G. G. Wilson and Albert Shaw, at a Conference on Foreign Relations, May 30, 1917, *Proc. Acad. of Pol. Sci.*, 7: 471, 489.

Molé announced to Baron de Werther that if Prussian soldiers entered Belgium, French troops would enter at the same time. M. de Rumigny, in Switzerland, and M. de Barante, at Turin, held the same language. . . . In every direction round our territory the government of King Louis Philippe exercised its action, thrusting aside foreign intervention, and proving itself an effectual, but unambitious protector of the independence of its neighbors, and of the security of France within her natural orbit. "We must," he often said, "balance causes and calculate distances; afar off, nothing calls upon us to implicate France; we may act or not according to prudence and our national interests. Near us, at our gates, we are committed beforehand. We can not allow the affairs of our immediate neighbors to be regulated by strangers and without our interference."¹⁰⁰

(c) BRITISH POLICY

A similar doctrine has had a place in British foreign policy. "To safeguard the independence of both Holland and Belgium" has been declared "a British hereditary policy" and an "obligation which binds Great Britain to place herself as the active auxiliary, when required, of any particular state or states on the continent."¹⁰¹ The geographical position of the channel states was believed by Lord Aberdeen to justify British intervention in 1830. He said in the House of Lords:

The interests of this country were at all times so intimately connected with those of the Netherlands, that it was impossible for the government to look with indifference at the situation in which they were placed. He had already stated most distinctly that the object of all interferences on the part of England were amicable and such as might be expected from a state situated as it was with regard to the Netherlands.¹⁰²

In the following year, Lord Palmerston, who had succeeded Aberdeen as Foreign Minister, thus generalized the rights of neighborhood:

There was nothing in the principle of noninterference fairly and reasonably laid down, which prescribed to a state the absence of all

¹⁰⁰ F. Guizot, *Memoires*, London, 1858, 2: 244-245. W. B. Lawrence notes this resemblance of French policy to the Monroe Doctrine, *Commentaire sur les éléments du droit international et sur l'histoire des progrès du droit des gens* de Henry Wheaton, Leipzig, 1868, 2: 312.

¹⁰¹ Montague Burrows, *The History of the Foreign Policy of Great Britain*, New York, 1895, pp. 120, 329.

¹⁰² November 8, 1830, *Hansard*, Series iii, 1: 247.

interference in what passed in a neighboring country, when that which was passing concerned the interests of the other party.¹⁰³

When the Belgian question again became prominent in 1870, Gladstone was no less insistent on the British interest in Belgian independence and neutrality, although he regarded it as founded on the general European interest in the maintenance of public right. "Too much," he thought, "had been said . . . of the specially distinct, separate, and exclusive interest which this country has in the maintenance of the neutrality of Belgium." Her real interest "is the same as that of every great Power in Europe. It is contrary to the interest of Europe that there should be unmeasured aggrandizement. . . . That it is a real interest, a substantial interest, I do not deny, but I protest against the attempt to attach to it an exclusive character."¹⁰⁴

In August, 1914, though emphasizing the particular obligation of Great Britain toward Belgium founded on the treaties of guarantee, Sir Edward Grey said in Parliament: "We have great vital interests in the independence — and integrity is the least part — of Belgium."¹⁰⁵ And in his dispatch of July 31, 1914, to the British Ambassador in Paris, he had said: "The preservation of the neutrality of Belgium might be, I would not say a decisive, but an important factor in determining our attitude."¹⁰⁶ In his speech to Parliament, Sir Edward also invoked the motives suggested by Gladstone in 1870, from whose speech he quoted, thus recognizing, as did President Wilson when he insisted that the Monroe Doctrine rested on a broader foundation than immediate self-defense that a government can not justify intervention, even in behalf of a neighboring state, unless in addition to a *possible* menace to its own safety, there is the more *certain*, although perhaps more distant menace, always following an assault upon the fundamental principles of public right.

¹⁰³ February 18, 1831, *ibid.*, I: 702.

¹⁰⁴ August 10, 1870, *ibid.*, 205: 1786.

¹⁰⁵ August 3, 1914, *Parliamentary Debates*, Series v, Commons, 65: 822.

¹⁰⁶ British White Paper, 1914, Doc. No. 119.

(d) CONFEDERATIONS

Cases in which a proper appreciation of political interest has been thought to dictate a genuine interest in the protection of the rights of foreign states, especially those with neighboring territory, might be indefinitely multiplied. It would in fact embrace a large part of the history of federations, confederations, and alliances. Except in the case of alliances with purely military objects,^{106 a} and non-political administrative unions, the most important facts upon which such political unions have been founded seem to have been common nationality and territorial propinquity. Nationality, including both the cultural and racial character of the people, has been prominent in the literature of political history, as evidenced by such names as Pan Anglicism, Pan Germanism, Pan Slavism and even Pan Turanism, but in practice the proximity and accessibility of territory has usually exercised a more effective influence. Pan Germanism, for instance, which seeks to gather into one political group not only Germans but Turks, Bulgars, Magyars, Czecho-Slavs, Jugo-Slavs, Poles and others, is better characterized by the geographic term "Mittel-Europa."

Where nationality and geographical proximity have combined, a movement for political union has frequently proved irresistible. The cities of ancient Greece, the Germanic Cantons of Switzerland in the Middle Ages, the Dutch states in the Renaissance period, the six nations of the Iroquois, and, in the past century, the states of Germany, of Italy, of Canada, of Australia, and of South Africa all were influenced by the fact of territorial propinquity, joined to a common heritage of race, tradition, and culture, to attempt some form of permanent union. Needless to say, it was the same factors which urged each of the British colonies in America to view the continent as

^{106 a} Even military alliances have frequently had a geographical basis. The Chinese Government authorized the statement on May 19, 1918, that a military agreement with Japan had been concluded, because, "on account of the propinquity of their territory, the governments recognized the necessity of a definite agreement for joint defense." Leagues for the preservation of neutrality have, likewise, generally had a basis in territorial propinquity. In proposing an armed neutrality league in October, 1914, Venezuela urged the duty of leadership by American states on the basis of "their geographic position." Naval War College, International Law Topics, 1916, p. 129.

a whole, at first half-heartedly, as in the Albany Convention, but with increasing conviction, until a "more perfect union" was achieved in the Convention of 1787.¹⁰⁷

(e) CONCERT OF EUROPE

On a larger scale, geographic proximity, unaided by the sentiment of common nationality, has tended to produce confederation, but in a far less effective manner. Thus territorial propinquity might be considered in relation to the conception of the solidarity of Europe, manifested in the Middle Ages by the Holy Roman Empire, but almost extinguished by the particularism of the age of enlightenment reflected in the political philosophies of Machiavelli and Hobbes. The conception was for a moment resuscitated in the Grand Design of Sully and Henry IV, but almost immediately relapsed in Utopian idealism in the plans of Crucé, Pann, St. Pierre, Bentham, and Kant. In the Holy Alliance of Alexander I, followed by the more substantial Quadruple Alliance, the idea again assumed political reality, but the vitality of Metternich's concert of Europe soon began to be sapped by the rising tide of nationalism, until his follower, von Beust, could find no Europe to prevent the war of 1870 and the repudiation of the Treaty of Paris by Russia.¹⁰⁸ At the end of the nineteenth century the ever latent conception of a united Europe again came into prominence by the rescript of another Czar and the institution of the Hague Conferences.¹⁰⁹

(f) PAN AMERICANISM

Of similar significance has been the movement toward continental solidarity in the New World. From two roots, the Latin American efforts at confederation and the North American Monroe Doctrine, has grown the institution of Pan Americanism.

¹⁰⁷ See E. A. Freeman, *History of Federal Government in Greece and Italy*, 2d ed., London, 1893; John Fiske, *The Federal Union, American Political Ideas*, New York, 1885.

¹⁰⁸ Von Beust, *Memoires*, trans. H. de Worms, London, 1887, 2: 222.

¹⁰⁹ See D. J. Hill, *World Organization as Affected by the Nature of the Modern State*, New York, 1911; W. Allison Phillips, *The Confederation of Europe*, Oxford, 1914. For texts of schemes of European organization, see W. Evans Darby, *International Arbitration*, 4th ed., London, 1904.

The Declaration of Rights of the People of Chile in 1810 stated that:

The people of Latin America can not, isolated, defend their sovereignty; in order to develop, they must become united, not for reasons of domestic policy, but for security abroad, against the projects of Europe and to avoid wars among themselves.¹¹⁰

In 1826 an attempt was made to accomplish this union in the Panama Congress, in which the representatives of Mexico, Central America, Colombia, and Peru signed a pact of "Union, alliance and perpetual confederation," the object being "to maintain defensively and offensively, if necessary, the sovereignty, independence, and territorial integrity of all and each of the Confederated Republics of America against all foreign domination." On this occasion President Adams and Secretary Clay were anxious that the United States should participate, but opposition developed in Congress, and the American delegates, though eventually commissioned, arrived too late to take part in the congress, and for the next half century the movement for Latin American union was independent of and often antagonistic to the United States.¹¹¹

The Panama treaties were not ratified, and attempts of Mexico in 1831, 1838, and 1840 to organize confederacies for mutual protection produced no results; but in 1847, alarmed by the suspected machinations of the Ecuadorian general, Flores, representatives of New Granada, Ecuador, Peru, Bolivia, and Chile, met at Lima and signed a treaty of confederation, which stated in its preamble that the confederated states,

Bound together by origin, language, religion and customs, by geographical position, by the common cause they have defended and by the analogy of their institutions, and above all, by common necessity and reciprocal interests, can not be considered but as parts of the same nation, which should unite their forces and resources to remove all the obstacles opposing the destiny offered them by nature and civilization.

¹¹⁰ Quoted by A. Alvarez, *Latin America and International Law*, this JOURNAL, 3: 277.

¹¹¹ For attitude of the United States, see *American State Papers, Foreign Relations*, 5: 834-905; 6: 383; *Cong. Debates*, 1826, Vol. 2, pt. 2. See also Moore, 6: 416 *et seq.*; Alvarez, this JOURNAL, 3: 280.

This treaty also failed of ratification, as did the similar treaties signed in Santiago and Washington in 1858 by most of the Latin American states bordering the Pacific, as a response to the alarm created by the war between the United States and Mexico and the Walker filibusters in Nicaragua.¹¹²

In 1864, the need for unity of the Latin American states was again emphasized by the Spanish reannexation of Santo Domingo in 1861, the French intervention in Mexico in 1862, the Spanish attempt to occupy the Chinchos Islands of Peru in 1864, as well as the imperialistic tendency of the foreign policy of the United States at that time. A congress was called at Lima, and on January 23, 1865, two treaties were signed by Bolivia, Colombia, Chile, Ecuador, Peru, Salvador and Venezuela, the first of which, according to President Perez of Chile, "provides for the defense of our America against the dangers which might threaten its independence and territorial integrity, and the other supplies the means of preserving peace and harmony between the contracting states." Under Article 1 of the first treaty:

The high contracting parties unite and ally themselves for the objects above mentioned [to provide for the external security, to strengthen their relations, to guarantee peace between them and to promote other common interests] and mutually guarantee the independence, sovereignty, and integrity of their respective territories, binding themselves in the terms of the present treaty to defend each other against all aggression that may be for the purpose of depriving any of them of any of the rights herein expressed, whether it come from a foreign Power, or from any of the parties allied by this pact, or from foreign forces not obeying a recognized government.¹¹³

These treaties also failed of general ratification, but their spirit was given practical effect in the war which soon after broke out between Chile and Spain. On December 5, 1865, Peru signed a treaty of offensive and defensive alliance with Chile "for the purpose of repelling the present aggression of the Spanish Government as also any other aggression of that government, the object of which may be to menace the independence, the sovereignty, or the democratic institutions of the two Republics or of any other Republic of the continent of South

¹¹² Alvarez, this JOURNAL, 8: 282.

¹¹³ British and Foreign State Papers, 56: 1186; 58: 420.

America," and in declaring war on Spain, January 14, 1866, Peru considered that "Independently of the special reasons which Peru has to demand of the Spanish Government reparation for the grave injuries done to her, she has conceived it her duty to treat as her own the question which that government has raised with Chile," and has consequently ratified a treaty of alliance "for the purpose of mutual preservation, and the preservation of America from the unjust and violent aggression of Spain."¹¹⁴

Bolivia and Ecuador also joined forces with Chile, the Minister of Foreign Affairs of the latter asserting:

That the government and people of the Equator considered the Chilean cause to be eminently American; that community of interest did not permit that Chile should find itself in the contest without the support of its sisters, the other republics of the continent; that considering the unjust aggression of Spain against Chile, a threat against the honor, dignity and rights of that republic and others of South America, it becomes the duty of all of them to unite their forces and resources to defend its sovereignty and political independence.¹¹⁵

Thus, although permanent confederation was not achieved on this occasion, the neighboring states of the Pacific were able to present a common front. It is noteworthy that in these early efforts at confederation, the states of Spanish nationality alone were interested. In later congresses representatives from all of the Latin Americas, Portuguese as well as Spanish, have attended, but the objects have been the codification of international law and the regulation of international administrative matters rather than political confederation. Such conferences have been held at Lima in 1877, at Bogota in 1880, and in Montevideo in 1888, the last producing several conventions ratified and still in force. Following the International American Conference at Washington, 1889-1890, the movement has become amalgamated with the general Pan American movement, including the United States.

¹¹⁴ British and Foreign State Papers, 56: 708, 709.

¹¹⁵ *Ibid.*, 56: 711. Declaration of war by Ecuador, *ibid.*, 56: 952. See also message of President Perez of Chile, June 1, 1866, *ibid.*, 58: 586. The United States refused to comply with Chile's request to intervene in the war. Mr. Seward, Secretary of State, to Mr. Kilpatrick, Minister to Chile, June 2, 1866, Dip. Correspondence, 1866, pt. 2, p. 413; Moore, 6: 445.

The Monroe Doctrine, regarded in its original significance as a guarantee of the independence and territorial integrity of American states, as well as in its more recently asserted significance as a guarantee of reasonable order and financial integrity in American states, especially those in the Caribbean region, is in a broad sense founded upon the instinct of self-preservation. It, however, permits action beyond that necessary for defense against immediate material dangers, and, as its scope has broadened, there has been a tendency to recognize the need of a sanction beyond the United States alone. In this aspect the Monroe Doctrine bears a close relation to Pan Americanism.

The solidarity of the Americas was certainly implied in the original statement of the doctrine:

The political system of the allied Powers is essentially different in this respect from that of America. This difference proceeds from that which exists in their respective governments. And to the defense of our own, which has been achieved by the loss of so much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted.

Emphasizing this phase, Secretary Olney referred to the doctrine in 1895 as "a long and firmly established doctrine of American public law" which "could not easily be ignored in a proper case for its application" and said: "The states of America, South as well as North, by geographical proximity, by natural sympathy, by similarity of governmental constitutions are friends and allies, commercially and politically, of the United States."¹¹⁶

Secretary Hay in 1901 defined the Pan American policy of the United States in response to a request of the Chilean Minister, and showed its relation to the Monroe Doctrine:

The Government of the United States has on many occasions expressed its strong desire that peace and harmony shall prevail among the countries with which it holds friendly relations, and especially among the republics of the American continents whose systems of government rest upon a common basis, and whose material interests are intimate and interdependent. . . . In one notable instance its counsels and offices were lent to bring about the arbitration of a boundary

¹¹⁶ Mr. Olney, Secretary of State, to Mr. Bayard, Ambassador to England, July 20, 1895, *Foreign Relations*, 1895, 1: 557; Moore, 6: 551-552.

dispute between a Spanish-American state and a European Power, doing so in furtherance of the national policy announced nearly eighty years ago.¹¹⁷

Latin American writers have called attention to the relation between the Monroe Doctrine in its original form and many of the early pronouncements of Latin American congresses on the obligation of mutual preservation among the Americas, some of them characterizing the doctrine as the leading principle of "American international law."¹¹⁸ From this standpoint, Foreign Minister Drago of the Argentine Republic in 1902 invoked the Monroe Doctrine in defense of the new doctrine, which bears his name, against armed intervention for the collection of contract debts.¹¹⁹ President Roosevelt seems to have desired a sanction for the doctrine beyond the United States alone when he said in 1901,¹²⁰ "The Monroe Doctrine should be the cardinal feature of the foreign policy of the nations of the two Americas, as it is of the United States."

The new Pan Americanism, which is closely related to this aspect of the Monroe Doctrine, as well as to the older Latin-Americanism, strictly began with the Pan American Conference at Washington in 1889-1890, which produced a treaty of arbitration, coupled with a repudiation of the right of conquest, which, however, was not ratified, a number of reports on matters of international administration and a Bureau of American Republics, later known as the Pan American Union. A second conference was held at Mexico City in 1902, a third at Rio Janeiro in 1906, a fourth in Buenos Ayres in 1910, and scientific conferences have been held at Santiago in 1909 and at Washington in 1916.¹²¹

¹¹⁷ Mr. Hay, Secretary of State, to Mr. Vicuna, Chilean Minister, January 3, 1901; Moore, 6: 603-604.

¹¹⁸ Alvarez, this JOURNAL, 3: 269, and the same author, *Le Droit International Americain*, Paris, 1910. See also conclusion of the Section on International Law of the First Pan American Scientific Congress, January 4, 1909, this JOURNAL, 3: 252.

¹¹⁹ Foreign Relations, 1903, pp. 1-5; Moore, 6: 592.

¹²⁰ Message, December 3, 1901, Foreign Relations, 1901, p. xxxvi; Moore, 6: 595.

¹²¹ Moore, 1: 292, 6: 599; D. P. Myers, *The New Pan Americanism*, World Peace Foundation, 1916.

President Wilson indicated adhesion to Pan Americanism early in his administration by a circular note to United States diplomatic officers in Latin American countries:

One of the chief objects of my administration will be to cultivate the friendship and deserve the confidence of our sister republics of Central and South America, and to promote in every proper and honorable way the interests which are common to the peoples of the two continents.

I earnestly desire the most cordial understanding and coöperation between the peoples and leaders of America and, therefore, deem it my duty to make this brief statement. Coöperation is possible only when supported at every turn by the orderly processes of just government based upon law, not upon arbitrary or irregular force.¹²²

He has called it into political activity by twice enlisting the coöperation of certain American countries in settling the Mexican imbroglio.¹²³ In response to the second of these efforts, the Pan American Union passed a resolution as follows:

The Pan American Union expresses its gratification and approval of the course adopted by the Governments of Argentina, Bolivia, Brazil, Chile, Guatemala, United States, and Uruguay in counseling together upon the situation in Mexico and in acting identically in recognizing the *de facto* Government of Mexico, in that it evidences the spirit of coöperation, which is the essential element of Pan American fraternity.¹²⁴

Other phases of Pan Americanism were emphasized by President Wilson in his address to the Pan American Scientific Conference in 1916. He said that the Monroe Doctrine in its negative aspect had been maintained on the responsibility of the United States alone, but added:

If America is to come into her own . . . she must establish the foundations of amity. . . . It will be accomplished, in the first place, by the states of America uniting in guaranteeing to each other absolute political independence and territorial integrity.^{124 a}

¹²² March 12, 1913, Myers, *op. cit.*, p. 7.

¹²³ American Year Book, 1914, p. 72, 1915, p. 116. See also President Wilson's address to Congress, December 7, 1915 (Cong. Rec., 53: 95), and Secretary Lansing's address to the Second Pan American Scientific Congress, December 27, 1915 (Myers, *op. cit.*, p. 98).

¹²⁴ Bulletin of Pan American Union, 41: 609 (November 1915).

^{124 a} American Year Book, 1916, p. 288. The relation of this solidarity of the

He then proceeded to outline a practical program for accomplishing this end, including an agreement for amicable settlement of all disputes, and:

The agreement necessary for the peace of the Americas, that no state of either continent will permit revolutionary expeditions against another state to be fitted out on its territory, and that they will prohibit the exportation of the munitions of war for the purpose of supplying revolutionists against neighboring governments.¹²⁵

This principle had already received recognition in the Joint Resolution of Congress of March 14, 1912, giving the President authority to forbid the export of arms and munitions of war to "any American country" in which he finds "conditions of domestic violence";¹²⁶ in the practice of Presidents Taft and Wilson under the resolution in connection with Mexico; and also in the Latin American schemes of confederation of 1848, 1858, and 1865.¹²⁷ In the references to "neighboring governments" and "any American country" there is a manifestation of the doctrine of territorial propinquity.

During the War of 1914, several South American countries referred to "American" practice as the basis for certain neutrality regulations¹²⁸ and after the declaration of war by the United States in April, 1917, several of them mentioned the solidarity of the Americas as a reason for severing diplomatic relations with Germany, revoking

Americas to the Monroe Doctrine and to the problem of a general guarantee of "the future peace of the world" was discussed by President Wilson in an address to a group of Mexican editors on June 7, 1918.

¹²⁵ American Year Book, 1913, p. 288; Myers, *op. cit.*, p. 108. The American Institute of International Law, at its second meeting at Havana, January 22-27, 1917, proposed the question for consideration: "Should the American Republics affirm, as a basis of international organization in their relations with the states of other continents, that the integrity and the sovereignty of the countries which constitute the American Continent or American World should be maintained; and, if so, should they declare themselves jointly and separately responsible for the maintenance of these principles?" This JOURNAL, Supp., 11: 50.

¹²⁶ 37 Stat. 630.

¹²⁷ *Supra*, notes 112, 113.

¹²⁸ Uruguay, decrees, December 14, 15, 1914, Naval War College, International Law Topics, 1916, pp. 115, 118. The special responsibilities of the "American states" are referred to in a Chilean decree, December 15, 1915, and a Venezuelan memorandum, October, 1914, *ibid.*, 28, 129.

neutrality decrees, or declaring war.¹²⁹ In a message to Congress of May 22, 1917, the President of Brazil stated:

Today, in consideration of the fact that the United States is an integral part of the American Union; in consideration, also, of the traditional policy of Brazil, which has always been governed by a complete unity of view with the United States; and, finally, in consideration of the sympathies of a great majority of the Brazilian nation, the administration invited Congress to revoke the decree of neutrality.¹³⁰

Coöperation of the states of the Western Hemisphere to protect their independence and system of government seems to have proved a necessary development of the Monroe Doctrine. If this is true, general international coöperation "to make the world safe for democracy" is not a departure from past policies so much as an enlargement justified by new technical conditions of commerce and communication. Nor would such an enlargement necessarily imply an abandonment of the territorial propinquity phase of the doctrine. An individual under ordinary circumstances is more concerned with his family than with his nation, and with his nation than with humanity; so a state may be expected to take a more intense interest in the integrity of neighboring states than in those of a remote quarter of the globe. The United States will probably continue, under ordinary circumstances, to be more interested in Canada, Cuba and the Caribbean than in Chile, and in Pan America than beyond the seas; but without implying an absence of responsibility for the larger order.

CONCLUSION

A review of the foregoing pronouncements shows that territorial propinquity has furnished a legal justification for the acquisition of territory, but only in regions unoccupied or occupied only by savages. Geographical position has been given some recognition as a justification for special economic privileges, which, however, have been fre-

¹²⁹ Naval War College, *International Law Documents*, 1917, pp. 60, 65, 77, 197, 198, 249; *American Year Book*, 1917, p. 50 *et seq.*

¹³⁰ Message, President of Brazil, May 22, 1917. This recommendation was acted upon, May 29, 1917, and followed by a declaration of war, October 27, 1917; *American Year Book*, 1917, p. 53.

quently a prelude to political incorporation. Propinquity to the enemy has been referred to by belligerents as a justification for subjecting neutrals to special economic restrictions; and the proximity of disorder to their frontiers has been often cited by states as a justification for the exercise of jurisdiction in foreign territory, but this justification has usually been accepted only where the case is covered by a special convention, where there is an instant and overwhelming necessity of defense, or where there is a marked difference in the civilization of the two states. As a doctrine applicable between states of equal standing, territorial propinquity would seem to be recognized only as a justification for special interests of mutual protection and coöperation.

The scope of the most recent illustration of the doctrine of territorial propinquity must await for the verdict of history. Does the Lansing-Ishii agreement give Japan a free hand to expand territorially in China? Her delay in fulfilling the promise to return Kiau Chau seems to raise that presumption.¹³¹ Does it permit her to gain a privileged economic situation in that country? Her position in Manchuria suggests that interpretation.¹³² Does it concede her the right to enjoy certain jurisdictional rights in China? Such might be inferred from some of the demands presented to that country in 1915 and 1916.¹³³

Yet the notes themselves¹³⁴ specifically provide against any impairment of the "territorial sovereignty of China" and the principle of the "open door," or "the acquisition by any government of any special rights or privileges that would affect the independence or territorial integrity of China or that would deny to the subjects or citizens of

¹³¹ American Year Book, 1914, p. 99. See also Chinese supplementary proposal to Group I, of the demands of January 18, 1915, *ibid.*, 110.

¹³² Groups II and III of demands of January 18, 1915, American Year Book, 1915, p. 111.

¹³³ Group V of demands of January 18, 1915, American Year Book, 1915, p. 112. Resulting agreement, May 25, 1915, this JOURNAL, Supp. 10: 5. See, also, eight demands made after the Cheng Chia Tun incident, September 2, 1916, this JOURNAL, Supp., 11: 113; American Year Book, 1916, p. 100.

¹³⁴ This JOURNAL, Supp. 12: 1; World Court Magazine, 3: 594 (Dec. 1917); American Year Book, 1917, p. 61.

any country the full enjoyment of equal opportunity in the commerce and industry of China."

Secretary Lansing interprets the agreement as¹³⁵ "openly proclaiming that the policy of Japan is not one of aggression, and by declaring that there is no intention to take advantage commercially or industrially of the special relations to China created by geographical position." And shortly prior to the conclusion of the agreement, Viscount Ishii spoke of the Japanese policy as follows:

There is this fundamental difference between the Monroe Doctrine of the United States as to Central and South America and the enunciation of Japan's attitude toward China. In the first there is on the part of the United States no engagement or promise, while in the other Japan voluntarily announces that Japan will herself engage not to violate the political or territorial integrity of her neighbor, and to observe the principle of the open door and equal opportunity, asking at the same time other nations to respect these principles.¹³⁶

From the words of the notes and the expressions used in connection with them, it may be inferred that protection of China from interference by foreign states is the only special interest Japan has in China. The doctrine would then be not unlike the Monroe Doctrine in its simplest form. If this is its true intent, it is to be hoped that, as in recent interpretations of the Monroe Doctrine, coöperation will be recognized as an essential feature of the doctrine and that in the determination of action to be taken under it, China will have an equal voice.

QUINCY WRIGHT.

¹³⁵ This JOURNAL, 12: 154; World Court Magazine, 3: 595.

¹³⁶ The Imperial Japanese Mission, 1917, Carnegie Endowment for International Peace, Division of Intercourse and Education, Publication No. 15, Washington, 1918, pp. 103-104. World Court Magazine, 3: 520 (November, 1917). The Chinese attitude toward the agreement is indicated by the declaration of the Chinese Legation in the United States, November 12, 1917, immediately after publication of the exchange of notes: "The Chinese Government will not allow herself to be bound by any agreement entered into by other nations." This JOURNAL, Supp., 12: 3; World Court Magazine, 3: 599 (December, 1917).

THE HELLENIC CRISIS FROM THE POINT OF VIEW OF CONSTITUTIONAL AND INTERNATIONAL LAW

PART IV¹

HAVING examined the question of the *casus foederis* of the Treaty of Alliance between Greece and Serbia, we shall now inquire whether the use of Greek territory by the Entente Powers for the purpose of carrying on military and naval operations against their enemies and the other forcible measures resorted to against Greece were justified either by reason of rights resulting from treaties, or on account of unneutral acts or omissions of the Government of Constantine.

Before discussing the points at issue, it will be necessary to summarize *seriatim* the facts connected with each.

It should be remembered that from the very beginning of the present war the Entente Powers have utilized the territorial waters of some islands in the Ægean Sea which were either under the military occupation of Greece or form part of her territory, and which the Allies subsequently occupied in order to further their military enterprises against Turkey. Thus, during the autumn of the year 1914, shortly after the entrance (November 5th) of the latter Power into the war as an ally of Germany and Austria, the fleets of the Entente Powers utilized the harbors and territory of some of the islands in the vicinity of the Straits of the Dardanelles as bases for their naval and, subsequently, military operations. The islands thus used for the prosecution of the war were Tenedos, Imbros, and Lemnos, and particularly the latter, on account of its convenient and safe harbor.

The two former islands were not then under the sovereignty of Greece, but were under Greek military occupation as a result of the first Balkan War, while the latter, namely, Lemnos, was incorporated

¹ Continued from previous issues as follows: January and April, 1917, and April, 1918.

into the Hellenic Kingdom by the diplomatic arrangements of the six great Powers at the London Conference of 1913. In fact, these European Powers, after having previously obtained the consent of Turkey as to the disposition of this and other islands of the Ægean Sea, had decided that Lemnos should pass from the Turkish sovereignty to that of Greece, while Tenedos and Imbros and another small island called Castellorizo, situated on the southern coast of Asia Minor, should continue under the dominion of the Ottoman Porte.^{1a} These dispositions were purely and simply the application of the principle of nationalities. Greece, on its side, relinquished its right of sovereignty over the islet of Sasson (Sasseno) — a former dependency of the Ionian Islands situated in the Gulf of Avlona — in favor of the so-called state of Albania, but practically in favor of Italy.

The question, therefore, may be asked, by what right the Entente Powers utilized these islands and treated them, so to speak, as *res nullius*?

In a semi-official communication issued at the time by the British Government, it was stated that the Allies had the right to occupy Tenedos and Imbros because these islands — although under the military occupation of Greece — continued to be part of the insular possessions of Turkey, and that further they had also the same right in regard to Lemnos, because, as they alleged, the Sultan had not ratified the decision of the London Conference of 1913.² Neither of the two arguments can stand a legal test, inasmuch as, in the first place, the invasion or taking possession of territory under the military occupation of a friendly and neutral power is no less a breach of neutrality than applying the same measure to territory under the sovereignty of such a neutral state. The same reasons apply with more force to the second argument. An impartial observer could not absolve the Allied Powers from a breach of Greek neutrality were it not for the fact that the then Greek Cabinet, presided over by Mr. Venizelos, tacitly acquiesced in these actions, because it was contemplating to

^{1a} See text of collective notes of February 14 and 15, 1914, to Greece and Turkey in *Le Temps*, February 15 and 16, 1914.

² *London Times*, March 20, 1915. See also semi-official statement of the French Government in *Le Temps*, January 23, 1916.

join the Entente Powers and had already offered the assistance of Greece in their war against Turkey.³ It is, however, incontrovertible that the disposition of the Ægean Islands, which were occupied by Greece during the first Balkan War, by the six great Powers of Europe was a concession made by them to the Sultan, who would have been compelled to cede them to Greece had the European Concert not interfered.⁴

The most serious charge made against the Entente Powers by their enemies for violating the neutrality of Greece, is the landing of the French and English troops in Salonika, to which reference has already been made.⁵ On October 2, 1915, M. Guillemin, the Minister of France, handed to Mr. Venizelos, then Greek Premier and Minister for Foreign Affairs, the following note:

By order of my Government I have the honor to announce to Your Excellency the arrival at Salonika of the first detachment of French troops, and to declare at the same time that France and Great Britain, the allies of Serbia, are sending their troops to help that country, as well as to maintain their communications with her, and that the two Powers rely upon Greece, who has already given them so many proofs of friendship, not to oppose the measures taken in the interests of Serbia, to whom she is equally allied.⁶

In refutation of the charge of violation of Greek neutrality made at the time by the Teutonic Powers, the official spokesman of Great Britain and France tried to justify the landing of their troops in Salonika by declaring repeatedly that this step was taken at the invitation of Mr. Venizelos in order to carry out the provisions of the Greco-Serbian Treaty of Alliance, by which Serbia was bound to put in line 150,000 troops, who, in conjunction with the Greek army, were to repel any aggression from Bulgaria against one or both of the contracting parties; that further, as Serbia was unable wholly to fulfill this obligation, France and Great Britain undertook to supply the necessary troops for that purpose.

³ See speech of Mr. Venizelos in the Boulé on August 26, 1917, in supplement to *Patris, Eleutheros Typos, Hestia, Ethnos*, and *Drassis*, p. 93.

⁴ See treaty of peace (Art. 5) in Supplement to this JOURNAL, January, 1914, Vol. 8, No. 1, pp. 51-52.



⁵ This JOURNAL, January, 1917, Vol. 11, No. 1, p. 69.

⁶ Text in London *Times*, October 7, 1915.

Thus Sir Edward Grey, then Secretary of State for Foreign Affairs, speaking in the House of Commons on October 14, 1915, said that the attack upon Serbia by Bulgaria raised the question of "treaty obligations between Greece and Serbia"; that it was "obvious to every one" that the interests of Greece and Serbia were one, and "in the long run they stand or fall together"; and that it was "through Greek territory alone that direct assistance could be given rapidly by the Allies to Serbia." Referring to the landing of the Anglo-French troops at Salonika, he said, "Such help as was within their power to give at once the Allies desired to give Greece and Serbia in this way, and they accordingly sent such French and British troops as were available to Salonika." He went on to say that Greece "made a formal protest; but that the assistance given in this way was welcomed was sufficiently proved by the circumstances of the landing, the reception of the troops, and the facilities for disembarking which had been given by the Greek Government." "Indeed," he added, "in view of the treaty between Greece and Serbia, how could there be any other attitude on the part of Greece towards the assistance offered through her to Serbia to meet the attack by Bulgaria."⁷

The same question came up again for discussion in the House on November 2, 1915, when Mr. Asquith, then Prime Minister, answering a criticism of the tardy and inefficient military help given by the Allies to Serbia, said that "up to the last moment there was the strongest reason to believe that Greece would acknowledge and act upon her treaty obligations to Serbia"; that when, on September 21, 1915, after the Bulgarian mobilization had begun, Mr. Venizelos asked France and Great Britain to send to Macedonia 150,000 troops, it was on the express understanding that Greece would also mobilize on September 24th, but that it was not until the 2d of October that "Mr. Venizelos found himself able to agree to the landing of British and French troops under the formal protest, or merely formal protest, which he had already made to the French Government." Mr. Asquith declared that neither Great Britain nor her allies could "allow Serbia to become the prey of a sinister and nefarious combination," and that

⁷ Parliamentary Debates, House of Commons, 5th Series, Vol. LXXIV, pp. 1514-1515.



"Serbia may be assured . . . that her independence is regarded . . . as one of the essential objects of the Allied Powers."⁸

Nor was the language used by the spokesman of the government in the House of Lords different either in form or substance.⁹

Notwithstanding these official declarations, the question of the landing of the Allied troops in Salonika, and generally the alleged violation of Greek neutrality by the Allies, was brought up for discussion more than once in both Houses of Parliament by various members upon inquiries as to what extent the charge made by the Central Powers against the Entente Allies for the violation of neutral territory had any foundation.

On April 18, 1916, Sir Edward Grey, answering a question put by Mr. Outhwaite, said: "The French and British Governments, as is known, originally decided to dispatch troops to Salonika on the invitation of the then Greek Prime Minister. Shortly afterwards there was a change of Greek Government, accompanied by a change of policy on the part of Greece, but the Allies could not then recede from the undertaking to which they had committed themselves." Referring to the subsequent occupation of other Greek territory by the Allies, he said that this was done "for the preservation of the Serbian troops at the Island of Corfu and the Allied troops at Salonika," and that "any steps of this nature which the Allies may take follow as a natural consequence from their decision to send an expedition to the help of the Serbs — a decision which was reached in the first instance at the request of Greece herself." In answer to a further inquiry from the same speaker as to whether Mr. Venizelos had denied in the Greek Legislature that he had invited the Allies to land troops at Sal-

⁸ Parliamentary Debates, House of Commons, 5th Series, Vol. LXXV, pp. 516-517.

⁹ See speech of the Marquess of Crewe, then Lord President of the Council, on October 14, 1915, in Parliamentary Debates, House of Lords, 5th Series, Vol. XIX, p. 1049. See also speech of the Marquess of Lansdowne, then minister without portfolio, on October 26, 1915, in House of Lords, *ibid.*, Vol. XX, p. 29, and statement in same House of the late Earl Kitchener, then Secretary of War, on February 15, 1916, *ibid.*, Vol. XXI, pp. 25-26; also, statement made in the House of Commons by Lord Robert Cecil, Under-Secretary for Foreign Affairs, on December 13, 1915, *ibid.*, Vol. LXXVI, p. 1474. See also speech of M. Viviani, then Premier of France, on October 12, 1915, in Chamber of Deputies, in *Le Temps*, October 13, 1915.

onika, Sir Edward Grey limited himself to the statement that "Everything that has happened in this case is on public record," which statement brought forth from another member the cry of "Another Belgium."¹⁰

As the use of the Macedonian port by the Anglo-French troops for carrying on their military operations against their enemies was the principal charge made by the pro-German or pro-Constantine party in Greece against Mr. Venizelos, and the occupation of Greek territory in Macedonia has been held out by them to the public as being the initial cause of the subsequent ordeal to which Greece and her people were subjected through the acts of both sets of belligerents, it may not be amiss to state fully the explanations given on this subject by the distinguished Greek statesman himself.

It should be stated from the outset that both Mr. Venizelos and his adherents were far from considering the landing of the Allied troops in Salonika and the proportions which the Allied expedition assumed in Macedonia, as evils; on the contrary, they hailed them from the beginning as a benefit to Greece, because they reasoned that had it not been for the timely arrival of the Entente troops in Macedonia, the Austro-Germans would have firmly established themselves in Salonika and they would have not only deprived the Hellenic Kingdom of that excellent outlet to the Ægean Sea, but also of the hinterland of the Macedonian territory, with its rich tobacco fields, and the other portions of Greek Macedonia, including the port of Cavalla, which has since been abandoned to the Bulgarians in consequence of the treachery of ex-King Constantine.

But notwithstanding this assertion as to the beneficent effect of the landing of the Allied troops in Salonika, Mr. Venizelos and his associates denied that this landing took place at the invitation, properly speaking, of the Greek Government, as has been so repeatedly asserted by the ministers of the Entente Powers.

During the landing of these troops in Salonika, Mr. Venizelos, on October 4, 1915, first explained the circumstances under which the

¹⁰ Parliamentary Debates, Vol. LXXXI, pp. 2184-2185. See also statements of Lord Robert Cecil on October 31, 1916, in Parliamentary Debates, Vol. LXXXVI, p. 1674; on November 8, 1916 Vol. LXXXVII, p. 169; and on December 21, 1916, Vol. LXXXVIII, p. 158.

landing was effected. He said that he had asked the representatives of Great Britain and France whether, in the event of an attack by Bulgaria against Serbia, — in which case the *casus foederis* of the Greco-Serbian Treaty of Alliance would arise — they would be willing to furnish the military aid which Serbia was unable to provide because her army was occupied elsewhere, and that the answer of the Allied ministers was in the affirmative. "I said at the same time," he added, to quote his own words, "that there should be no misunderstanding, because I proposed the sending of this force not in order to assume new obligations, but to know whether in case the *casus foederis* should arise, this force would be supplied." ¹¹

Mr. Venizelos then read the letter of protest which he had lodged with Great Britain and France on account of the landing of the Allied troops in Greek territory, and said that it was useless to add anything to this protest; that the government did not intend "to take forcible steps to prevent the passage of the Anglo-French armies" hastening to assist the allies of Greece, namely, the Serbians, who were threatened with attack by the Bulgarians; that apart from the point of view of neutrality, it was necessary to examine whether the passage of these troops through the territory of Greece might not finally prejudice the interests of the country. "This fear," he concluded, "has disappeared as the result of official declarations that the proposals of the Entente to Bulgaria in regard to territorial cessions have lapsed since the Bulgarian mobilization." ¹²

¹¹ Speech of Mr. Venizelos in supplement to *Patris*, pp. 6-7. Also, Greece in Her True Light, speeches of Mr. Venizelos, translated by Socrates A. Xanthakes and Nicholas S. Sakellarios, pp. 65-66. See also speech of November 3, 1915, supplement of *Patris*, p. 95; *ibid.*, speeches of Mr. Venizelos, by Socrates A. Xanthakes and Nicholas Sakellarios, p. 162.

¹² *Times*, October 7, 1915. When subsequently this question was again agitated by the pro-Constantine and pro-German press of Athens, Mr. Venizelos, in defense of his policy, explained in detail, through the newspaper *Keryx*, the circumstances under which the landing took place and the incidents connected with it. In this explanation, Mr. Venizelos, referring to the declaration made by Sir Edward Grey on this subject, added that, if that declaration was correctly quoted, it corresponded in substance, but not literally, to the facts in the case; but that, nevertheless, the then Greek Government viewed with joy the arrival of the Anglo-French troops in Salonika, since being certain of the expected Bulgarian invasion of Serbia, it had decided to assist her ally; that, therefore, he was happy to say that had Greece

After the overthrow of Constantine (June, 1917) and the assumption of the premiership for the third time by Mr. Venizelos, the question of the landing of the Anglo-French troops in Salonika came up again for discussion before the Greek Legislature.

The Premier, addressing the members of the Boulé on August 26, 1917, said that when the Greek General Staff contended that Serbia would be unable to put in line 150,000 troops, as required by the Military Convention between Greece and Serbia, in case of war with Bulgaria, he asked the then King whether he (Constantine) did not think that in order to overcome this objection, or better, to strengthen the military forces of Greece and Serbia, England and France should be asked to supply the 150,000 troops referred to, and that Constantine said in answer, "Certainly, but they should not send colonial troops, but 'metropolitan troops.'"

In the course of his speech, Mr. Venizelos repeated what he had said two years before, namely, that upon his suggestion the ministers of the Entente Powers at Athens inquired of their governments whether they would be willing to furnish the above mentioned military aid and that the answer to this inquiry was in the affirmative, but that in the meantime Constantine changed his mind and withdrew his consent to approaching the Entente Powers on the subject. It was then that the first serious clash occurred between King and Premier, which brought so many complications and ultimately resulted in the expulsion of Constantine from the country.

According to the Greek Premier's own narrative, when the royal *volte-face* was communicated to him by a palace official, he told the latter to say to the King that he (Mr. Venizelos) had already seen the ministers of the Entente, but even had he not done so, he would not have been prevented from doing so on account of the opinion of the King, because it was necessary for the Premier, as the head of a responsible government, to know if the Entente Powers were disposed to lend their aid so that he might formulate his opinion on the matter; that, when the Premier afterwards communicated to the King the answer of the Entente Powers, Constantine told him that as long as taken the offensive against Bulgaria, there would have existed in Salonika a large Anglo-French army. (*Keryx*, No. 6, April 10 [O. S.] 1916.)

Bulgaria did not take the offensive against Serbia, the *casus foederis* of the Greco-Serbian Treaty would not arise and that, therefore, the landing of the Allied troops before the happening of that contingency would be a violation of the neutrality of Greece. Mr. Venizelos says that upon the receipt of this message he transmitted it to the ministers of the Entente, but that the Allied Governments replied that they had already ordered their troops to proceed to Greece (part of them being sent from Lemnos, near the Dardanelles) and that, moreover, since the Greek Government declared that in case Bulgaria attacked Serbia, Greece would take the offensive against Bulgaria on the side of the Entente, they did not see why the arrival of the Allied troops in Salonika should be put off, because it was certain that Bulgaria would attack Serbia, and that the Greek Government should be thankful for the timely arrival of the Allied troops. The Allied ministers added that they would assume full responsibility for this action.

"I answered," says Mr. Venizelos, that "all you tell me is right and I can not deny that I also like it very much; but there is the question of the formal neutrality, at least, until the time of the attack (by Bulgaria); I therefore inform you that I am obliged to protest against the landing of the troops, because that act constitutes a violation of our neutrality." "Very well, they answered," added Mr. Venizelos, "you protest, but we hope your conduct will not be hostile but friendly." "Very friendly," he answered, "not only will you not find yourselves in a hostile country, but after the protest we shall give you all possible landing, encampment, and other facilities."

Mr. Venizelos said that he communicated the above to the King and that Constantine told him: "It is well, but let your protest be more or less strong." "Yes, strong," I said, "up to a certain point, because considering what is concealed underneath, it can not be very strong; but I shall try to make it strong up to the point that is permissible, and at the same time, [it will be] a serious one."

The Greek Premier concluded by saying that the landing of the Anglo-French troops in Salonika was in conformity with his policy, because the government over which he then presided had decided to declare war against Bulgaria if the latter attacked Serbia, and that therefore it was in the interests of Greece to have, beside the

Serbian and Greek armies, the additional 150,000 Anglo-French troops.¹³

As the statements made at various times by Mr. Venizelos on this subject have never been challenged nor contradicted by the British or French ministers, we are led to conclude that his explanation of the circumstances under which the landing of the Allied troops in Salonika took place is entirely correct.

The military occupation of Salonika and the hinterland by the Entente Powers was not only heralded by the Teutonic Allies as a wanton violation of the neutrality of Greece, but was also used against Mr. Venizelos and his party by King Constantine and his Germanophile clique, who denounced it as the source of all the trouble in which Greece has been involved during the present war.¹⁴

The above facts and incidents connected with the landing of the Allied troops in Salonika show that the Entente Powers had not, strictly speaking, obtained the actual consent of the Greek Government before, or formal ratification after, the act; but it must be admitted that the Governments of France and Great Britain believed that their proceeding, although irregular in form, had the tacit approval of both the Greek Cabinet and Legislature at the time, as shown by the above explanation of Mr. Venizelos and by the vote of confidence given to his Cabinet in October, 1915, for the fulfillment of the treaty obligations of Greece toward Serbia. It is also probable, if not certain, that France and Great Britain would not have sent their troops to Salonika, had they not thought that the Greek Government intended to carry out the obligations incumbent upon it by the Treaty of Alliance with Serbia; nor could their statesmen have foreseen that Constantine, after the result of the elections of June, 1915 — during which the principal issue was the question of carrying out the treaty obligations of Greece toward Serbia and in which the voters fully sustained the Venizelos party — would disregard the popular will and

¹³ Supplement to *Patris, Eleftheros Typos, Hestia, Ethnos*, and *Drassis*, speeches of Mr. Venizelos and Messrs. Repouli, Politis, Cafandari, etc., pp. 136 *et seq.* See also *Cinq Ans d'Histoire Grecque*, by Leon Maccas, pp. 62 *et seq.*

¹⁴ Speech of von Bethmann-Hollweg in the Reichstag on December 9, 1915, in London *Times*, December 10, 1915, and bitter denunciation of the Entente Powers by Constantine in his interview with correspondent of Associated Press, in American newspapers of January 13, 1916.

suddenly become a full-fledged autocrat by arbitrarily imposing his personal will on the country, contrary to all constitutional usages and the historical traditions of the Hellenic state and people.

But apart from the consideration of the legality or illegality of the action of the Entente Powers, there is one thing certain, and that is, that had it not been for the Macedonian expedition of the Allies, the Austro-German army would have occupied the port of Salonika and the Bulgarians would have immediately taken possession of the port of Cavalla and the hinterland, as they have subsequently done, notwithstanding the assurances to the contrary given by Germany to ex-King Constantine's Government.¹⁵ Therefore, instead of Cavalla, Greece would also have to mourn the loss of Salonika and Greek Macedonia and probably the province of Thessaly — the granary of Hellas — which would certainly have been occupied by the Central Powers on the pretext of military necessity.

According to the Greek Constitution (Art. 99) no foreign troops can go through or be quartered in the territory of Greece without the sanction of the Legislature. It is to be assumed that had Mr. Venizelos remained in power after the landing of the Allied troops in Salonika, the requirements of the Greek Constitution would have been complied with, because Greece would have undoubtedly joined the Entente Powers. The question may, however, be asked whether, in the absence of such legislative sanction, the mere invitation of the Greek Government — assuming for the sake of argument that such an invitation existed in the strictest sense of the word — justified the Allies to take such action in accordance to the principles of the law of nations and international usages. In a word, if the executive of a country enters into a covenant with a foreign government and assumes an obligation contrary to the Constitution of the country, can the other contracting party or parties claim that, as far as they are concerned, such an agreement is valid and that therefore it should be carried out; or, on the other hand, can the executive, shielding itself behind the Constitution, refuse to comply with the terms of such a compact?

As a general rule, when a government concludes a treaty with

¹⁵ See Greek White Book, Documents Nos. 67 and 71. Supplement to this JOURNAL for April, 1918, pp. 159 and 164.

a foreign executive, it presumes that the other contracting party is assured of, or will secure, the assent of the legislature, whenever such assent is required, or that at least it will exert all its influence to have such a treaty ratified. Be that as it may, we should bear in mind that the position of Greece in regard to the three Entente Powers is similar to that of a ward to a guardian. Hellas, being the creature of the three protecting Powers, has a privileged position among the states of the Near East and at the same time she also has certain obligations. These Powers, in their solicitude for the state they had established on the classic soil of Greece, resolved "to watch over the maintenance of the repose, of the independence, and of the prosperity of the Hellenic Kingdom" which they "contributed to found in the general interest of civilization, of order, and of peace."¹⁶

By the Protocol of London of February 3, 1830, Article 8, the protecting Powers agreed that "No troops belonging to one of the contracting Powers (Great Britain, France, and Russia) shall be allowed to enter the territory of the new Greek state, without the consent of the two other courts who signed the treaty."¹⁷ Various publicists of the Entente Powers, relying on this stipulation, argue with much force that the protecting Powers had the right to land troops in Greece independently of the consent of the government of that country. A distinguished Hellenist and ardent Philhellene, commenting upon this point, has observed that, when after the abdication or dethronement of King Otho in 1862, the people of Greece elected Prince Alfred of England as their future sovereign, the three protecting Powers vetoed the election, founding their right on Article 3 of the same protocol,¹⁸ according to which such a sovereign could not have been elected from any of the royal families of the three Powers.

¹⁶ Protocol of London of May 27, 1863, Hertslet, *The Map of Europe by Treaty*, Vol. II, p. 1537.

¹⁷ Hertslet, *Map of Europe by Treaty*, Vol. II, p. 841; also Supplement to this JOURNAL, April, 1918, p. 67.

¹⁸ Article by Dr. R. M. Burrows, in *The New Europe*, Vol. I, No. 4, p. 115 *et seq.* (November 9, 1916). See Hertslet, Appendix, joint note of December 15, 1862 (against the acceptance of the Greek Crown by Alfred); also, Hertslet, Vol. II, p. 1530, Speech of the Lords Commissioners of February 5, 1863. The present writer has expressed the same opinion in an interview with an editor of the *National Herald* (a Greek newspaper of New York) in its issue of June 27, 1916.

It is true that the three protecting Powers have not guaranteed by a special diplomatic instrument the new possessions of Greece acquired after the Balkan War, as in the case of the Ionian Islands incorporated with Greece by the treaty of July 13, 1863, which declared (Art. V) that these islands "shall be comprised in the guarantee stipulated by Article III of the present treaty."¹⁹ But the omission of a specific guarantee, which was a precautionary measure in the case of the Ionian Islands, does not deprive the protecting Powers of the right of watching over "the maintenance and repose of the independence and prosperity of the Hellenic Kingdom" which were threatened by the Teutonic invasion of the Balkan Peninsula.

It should also be noted that Thessaly, which was annexed to Greece in 1885 by the arrangements of the Treaty of Berlin of 1878, is in the same position as the new possessions of Greece, but that did not prevent the three protecting Powers from saving that province from Turkish dominion after the Turkish War of 1897 when the Turks occupied it and intended to reincorporate it with the Ottoman Empire.

Unfortunately, the Allied Powers have not relied upon these diplomatic instruments to justify the landing of their troops in Salonika, but upon the flimsy words that "they were invited to do so by Mr. Venizelos, then Premier of Greece."²⁰

In the beginning of the year 1916 another source of friction developed between the Entente Allies and the Government of Constantine over the use of the Island of Corfu as a place of recuperation and rest for the Serbian troops. On January 12, 1916, the ministers of the Entente Powers at Athens informed the Greek Government that for reasons of humanity they intended to transport from Albania the Serbian troops who had retreated there after the invasion of their country by the Teutonic armies, and to quarter them in the Island of Corfu, adding that the use of Greek territory for such a purpose would be of a temporary character only.²¹ The Government of the King

¹⁹ Hertslet, Vol. II, p. 1547; Supplement to this JOURNAL, April, 1918, p. 77.

²⁰ See, however, the declaration made on November 21, 1916, in the House of Commons by Lord Robert Cecil "in regard to the sanctions which may be exercised by the guaranteeing Powers," when he pointed out Article 8 of the Protocol of 1830, in Parliamentary Debates, Vol. LVII, pp. 1179-1180.

²¹ Note of Entente in London *Times*, January 13, 1916.

considered this proceeding a violation of the neutrality of Greece and also of the treaty of November 14, 1863, between France, Great Britain, Russia, Prussia, and Austria, by which the Islands of Corfu and Paxos, belonging to the Ionian group of islands, were declared neutral,²² and protested against the contemplated action; but the transportation of the Serbian troops to Corfu was nevertheless carried out.²³ The Central Powers on their side considered this action of the Entente Allies as a flagrant violation of a solemn treaty, and lodged a protest with the neutral governments.

The occupation of Corfu by the Entente Allies was not an isolated act, but was subsequently followed by the landing of their military or naval contingents in other Greek islands, either for the purpose of searching for bases of German submarines, or simply with the object of using such islands as bases for military operations. Thus, on April 10, 1916, the ministers of France and Great Britain informed the Greek Government that they intended to establish naval bases in some of the Greek islands, which they considered to be "a measure dictated by urgent necessity" and which, they added, "would not infringe the sovereign and territorial rights of Greece."²⁴

It was this treatment of Greek territory as *res nullius*, so to speak, that excited the ire of Constantine, who, at one time venting his wrath through a correspondent of the Associated Press, said that it was "the merest cant for Great Britain and France to talk about the violation of the neutrality of Belgium and Luxembourg after what they themselves have done and are doing here. Just look," he added, "at the list of Greek territory already occupied by the Allied troops, — the Islands of Lemnos, Imbros, Mitylene, Corfu, and the city of Saloniki, including the Chalcidic Peninsula, and a large part of Macedonia. They plead," he continued, "military necessity. It was under constraint of military necessity that Germany invaded Belgium and occupied Luxembourg."²⁵

²² See Hertzslet, Vol. II, p. 1569.

²³ Protest of Greek Government in London *Times*, February 9, 1916.

²⁴ London *Times*, April 12, 1916.

²⁵ See this interview in American newspapers of January 20, 1916, and London *Times*, of January 21, 1916.

The ex-King of Greece, in criticizing the action of the Entente Powers in regard

Before enumerating the other actions of the Entente Allies which ultimately resulted in their forcible intervention in the affairs of Greece, it is pertinent to state the reasons which gave rise to such interference; that is, to summarize chronologically the acts or inactions of the Greek Government which were considered by the Entente Powers sufficient to justify their intervention.

✓ The initial discontent of the Entente Powers with Greece was undoubtedly due to the refusal of the Government of Constantine to carry out the treaty obligations of Greece, which refusal was the source of all the evils that subsequently followed.²⁶

That brings us to an examination of the question as to how far Constantine, under whose behest and order the Greek Government, except the Cabinet of Mr. Venizelos, was acting, maintained, if not a benevolent, as it had promised,²⁷ at least a strict neutrality toward the Entente Powers; or was he, on the contrary, helping the Central Powers and their allies, thereby justifying the repressive measures adopted by the Entente Allies against Greece, culminating in the dethronement and expulsion of Constantine from the country.

Any impartial observer who followed attentively the policy of the various Greek Cabinets which assumed power after Mr. Venizelos, can not have helped noticing that the Greek ministers who formed the then Government of Constantine were but his docile instruments, merely carrying out his orders in the management of both the internal and external affairs of the Hellenic Kingdom.²⁸ Another patent fact

to his former country, overlooked the fundamental fact that, in the first place, had it not been for his arbitrary step of dismissing repeatedly, in the course of the year 1915, the Cabinet of Mr. Venizelos and dissolving the then elected legislature, the Hellenic army would have undoubtedly joined the Allies, and possibly prevented not only the ruin of Serbia and perhaps of Roumania, but also the calamities which subsequently befell Greece. The other harsh measures which were adopted against Greece were due solely to the double-dealing of Constantine and the secret help which, at various times and in various ways, he gave to the Teutonic Powers and their Allies.

²⁶ On the treaty obligations of Greece, see this JOURNAL, April, 1918, p. 312.

²⁷ Greek White Book, Documents Nos. 29, 33, 35 and particularly No. 37, in Supplement to this JOURNAL, April, 1918, pp. 123, 126, and 129.

²⁸ Mr. Zalocostas, ex-Minister of Foreign Affairs, admitted before the Parlia-

is that the German Emperor and his agents were the principal actors in the Grecian tragedy, using Constantine as their tool.

But from the very beginning of the Hellenic crisis there was one stumbling block which thwarted, for some time, the realization of the Teutonic machinations. That was the overwhelming sentiment of the Greek people, who because of their historical traditions leaned strongly toward the three protecting Powers, namely, France, Great Britain, and Russia, and undoubtedly in the beginning of the war the Greeks, both in and out of the kingdom, were heart and soul with these Powers. Therefore, it needed a most dexterous manoeuvring in order, if not to shift this sympathy to the side of the Teutonic group of Powers, at least to counteract it in such a way as to bring about a feeling of distrust and animosity between the Greek people and the Entente Governments and their people.

Two artifices were used for this purpose. The first was to convince the general public, and especially the army, that the German troops were invincible; the second, to inspire the Hellenic people with dread and awe of Germany, warning them of the consequences that might ensue from a resistance against the military machine of the Teutonic Powers. However, as it was feared that the Greek people might not easily be convinced or cowed in this way, a resort to corruption was considered as the safest means of attaining the end. The instrument chosen for this nefarious work was the notorious German propagandist, Baron Shenck, then *persona grata* at the royal palace at Athens.²⁹ Constantine, defying every criticism, was in constant touch with Baron Shenck, while his Government pretended neither to see nor hear what was going on in the country. On the

mentary Committee of the Boulé (session of 1918) at Athens that he was signing the secret telegrams sent to Berlin without knowing their contents.

²⁹ This German propagandist, who had commenced his career in Greece as agent of the Krupp Company, and afterwards acted as a correspondent of the Wolf Telegraphic Agency, became overnight Secretary of the German Legation, evidently for the purpose of granting him diplomatic immunities in the country so that he could carry out his nefarious work with more freedom and less fear.

Concerning the activities of this German agent, see *Light on the Balkan Darkness*, by W. H. Crawford Price, pp. 50-51, and *Venizelos and the War*, by the same author, pp. 41-44. See also his statement to *Local-Anzeiger* in *Le Temps*, September 27, 1916.

other hand, his consort, Queen Sophie, an off-shoot of the Hohenzollern family, took a leading part in the propaganda work of her fatherland, and, as a British correspondent said, "was in constant telegraphic communication with the Kaiser until the Allies seized the wires."³⁰

Consequently, the German propaganda, being under such a high patronage, was carried to alarming proportions, extending its machinations and spreading its nets all over Greece. The world then witnessed a most peculiar phenomenon; namely, a sovereign countenancing and even coöperating with a foreign agent for the corruption of his people. The result of this corruptive agency was most pernicious to Greece and to the Entente Allies. In the beginning of the European war there were no pro-German newspapers in Greece, but gradually a number of them supported the so-called policy of the ex-King.³¹

Before considering the evidence that the Entente Governments now possess that Constantine and his satellites were all along helping the Teutonic Powers and their allies, and the revelations which have been made since his dethronement setting at rest all doubts of his having actually aided and abetted the German aims, it is necessary to refer to some of the incidents which, at the time, had convinced the Entente that Constantine was merely an agent of the German Government and was only waiting for a favorable opportunity to side openly with the Central Powers.

After the assumption of power by Mr. Skouloudis and his octogenarian coadjutors (the Premier himself having already passed that age limit), who were humorously called the "Ministry of Old Men," the relations between the Entente Powers and Constantine's Government became seriously strained and were many times at the breaking point. These "wise counselors" of the King very early assumed a bellicose

³⁰ Crawford Price, *Venizelos and the War*, p. 30. See particularly Greek White Book, entitled "*Documents Diplomatiques*," 1913-1917, Supplément, Nos. 51, 80, 81, 83, 84, 90, 91, 93, 98, and 103.

³¹ An eye-witness tells us that in the beginning of the European War out of the fourteen newspapers in Greece twelve supported the policy of Mr. Venizelos, and two of them were anti-Venizelist but not pro-German; that the Greek papers at first refused to publish the news given to them by Baron Shenck, and he had them printed as advertisements. Special articles extolling the victories of the German army were sent to the editors with a note: "Please insert this article and send the account for same. The amount will not be questioned." Price, *ibid.*, p. 41.

attitude and threatened to intern not only the Serbian troops withdrawn to Greek territory, but also those of the Allies, and generally to restrict the freedom of movement of these troops in Greek Macedonia. Hence the various measures of retaliation that were adopted against Greece by some of the Governments of the Entente in November, 1915, the first of which was the withdrawal of the economic and commercial facilities enjoyed by Greece.³² The Greek Government thereupon gave assurances that it would not interfere with the military operations of the Allies, and these privileges were restored; but other restrictions of a more drastic character were subsequently adopted for other reasons.

The open propaganda and the spy system carried on in Greece under the patronage of Constantine and his accomplices, coupled with the other underhand methods of the ex-king, compelled the Entente Powers in the beginning of 1916 to take drastic measures for the safety of their troops in Macedonia. The consulates of the Teutonic Powers and their allies in Salonika were the principal centers of their espionage system, and upon the bombardment of Salonika by the aeroplanes of the Central Powers, the said consuls were immediately expelled by the military authorities of the Entente Powers. Going a little further, they demanded and obtained the withdrawal from Salonika and its vicinity of the Greek troops, also the control of its harbor and of the railways and other means of communication in Greek Macedonia which were considered necessary for carrying on the military and naval operations of the Allies. Toward the end of the same month the French troops occupied the fortress of Kara-Bouroun at the entrance to the harbor of Salonika, which measure completely insured the safety of the Allied troops and the security of their means of communication by sea.

Some time after the adoption of these retaliatory measures, the "scandal of the wheat sacks" occurred, an incident which stirred the Greek public and opened the eyes of the Allied ministers at Athens. These sacks were originally the property of the Russian Government and were brought to Salonika for transportation to Bessarabia. As

³² Statement of British Legation at Athens, in London *Times*, November 22, 1915. See also protest of Greek Government in Supplement to this JOURNAL of April, 1918, Document No. 40, p. 134.

the communications between Greece and Russia were blocked by the military success of the Central Powers in the Balkan Peninsula, the wheat sacks were stored in a warehouse in Salonika, but on April 21, 1915, were commandeered by the Greek Government. After the expulsion of the enemy consuls from Salonika in January, 1916, the military authorities of the Allies, in searching the archives of these consulates, found among the papers of the Bulgarian consulate a copy of a telegram sent by Mr. Passarof, the Minister of Bulgaria at Athens, to Mr. Rodoslavoff, the Bulgarian Premier and Minister for Foreign Affairs, informing him that in a conversation with Mr. Gounaris, Greek Minister of the Interior, in regard to the transfer of these sacks to the Bulgarian Government, the latter had told him that in order to avoid detection by the British authorities, he would recommend that the National Bank of Greece buy these sacks for the account of the National Bank of Bulgaria, under the pretext that the sacks be sent to Bulgaria to bring wheat to Greece, because, Mr. Gounaris said, if Bulgarian merchants bought the sacks directly and the British agents should find it out, the discovery would create a very disagreeable affair; furthermore, naïvely added Mr. Gounaris, after these sacks had been used by Bulgaria for her military operations, the National Bank of Bulgaria should return them to Greece filled with wheat.³³ When this matter was brought to the attention of the Greek Government by the ministers of the Allies, Mr. Skouloudis asserted that the members of his Cabinet were not compromised in the matter, but Mr. Gounaris himself never denied the charge made against him, leaving his defense to the Premier.³⁴

That the Royal Government of Greece was not disposed in any way to help the Allied cause was quite patent to the diplomats of the Entente Powers, but no question had, up to the spring of 1916, stirred the public opinion in the Allied countries so much as the incident of the transportation of Serbian troops from the Island of Corfu to Salonika. In the course of April, 1916, the Entente Powers were anxious to strengthen their Balkan army by the Serbian troops who were recuperating at Corfu and were considering transporting them through the

³³ See *Le Temps* of April 10, 1916, for text of this telegram, and statement of Russian Consul at Salonika in *Le Temps*, April 19, 1916.

³⁴ See speech of Mr. Skouloudis in *London Times*, April 15 and 17, 1916.

territory of Greece in order to avoid the dangers of enemy submarines, then very active in the Mediterranean. As the Greek Government had not denounced the Treaty of Alliance between it and Serbia and considered it as still in force, Serbia requested her ally to permit the transportation of her troops through Greek territory.³⁵ Although this step of the Serbian Minister was warmly supported by the ministers of the Entente at Athens, the Government of Constantine peremptorily refused to accede to the request.³⁶

Mr. Skouloudis, who was then at the head of the Greek Government, in a lengthy communication to the Entente Powers tried to justify the attitude of the Greek Government in the matter.

After stating that such an action by the Allies against the consent of Greece would constitute a violation of her sovereignty, he again referred to the much heralded desire for the maintenance of neutrality by his country, and added that the acquiescence of Greece in the transportation of the Serbian troops across Greek territory would be considered by the Central Powers as a hostile act against them. The Greek Premier stated, in addition, various other secondary reasons, such as the disturbance of the railway system of Greece, the possible friction with local authorities by reason of the presence of foreign troops in the country, the danger to public health, the difficulties of revictualing the people of Greece, and the like, which all combined militated, according to his opinion, against the transportation of the Serbian troops through the mainland of Greece.³⁷ The Allied ministers, seeing the impossibility of convincing the Greek Government, and wishing to avoid an open breach with the King, decided to transport the Serbian troops by sea and to face all the submarine dangers, which task was, fortunately, achieved without any mishap whatever.

It is now known that the ex-King of Greece, from the very beginning

³⁵ Note of April 20, 1916, of the Minister of Serbia at Athens addressed to the Greek Government in Greek White Book, Document No. 41, Supplement to this JOURNAL, April, 1918, p. 135.

³⁶ Greek White Book, Document No. 42, telegram of Mr. Skouloudis to the Greek Legations of Paris and London, in Supplement to this JOURNAL, April, 1918, p. 136.

³⁷ Greek White Book, Doc. No. 43, telegraphic circular dated April 27, 1916, and Doc. No. 44, in Supplement to this JOURNAL, April, 1918, pp. 137 and 139.

of the European War, was not only in full sympathy with the policy of his brother-in-law, Emperor William II, and did everything in his power to further the aims of the German Empire, but also gave actual assistance to the Teutonic armies.

As early as July 25, 1914, answering a request of his Imperial brother-in-law to mobilize the Greek army and "place himself at the side of the Emperor," he frankly admitted that his "personal sympathies" and political views drew him to the Emperor's side, but he was unable to accede to the demand of William II because of the difficulty of doing so on account of the geographical situation of Greece.³⁸

In December, 1915, nearly three months after the retirement of Mr. Venizelos from the Premiership and his substitution by Mr. Gounaris, we find Constantine trying secretly to negotiate a loan with Germany and this after the Greek Government had pledged itself officially to maintain a benevolent neutrality toward the Entente.³⁹

There is irrefutable evidence showing that soon after the landing of troops in Salonika, Constantine began to negotiate with Germany as to the means of compelling the Allied army to abandon Macedonia.⁴⁰

It was an open secret at Athens at the time of the "Royal Cabinets" that the military movements of the troops of the Allies in Macedonia were immediately made known to the Teutonic and Bulgarian military staffs, the medium of communication in the beginning of the war being the official and unofficial agents of the Central Powers in Greece, who received the news from the royal palace and the pro-German Greek General Staff; but after the expulsion of their representatives from

³⁸ See Greek White Book, telegram of July 22, 1914, Doc. No. 19, and of July 25, 1914, Doc. No. 21, in Supplement to this JOURNAL, April, 1918, pp. 115, 117.

³⁹ Telegrams addressed to Constantine by Theotoky, Minister of Greece at Berlin, dated December 14, 15, 21, 29, 1915, also January 1, 5, 21, 30, and November 14, 1916, in *Documents Diplomatiques*, Supplément, Nos. 36, 37, 38, 39, 41, 42, 43, 46, and No. 59 from Greek Minister of Foreign Affairs to Theotoky.

This loan was subsequently secretly concluded through the connivance of two members of the Cabinet, namely, Mr. Skouloudis, the Prime Minister, and Mr. Gounaris, the Minister of the Interior, and was never submitted to the Boulé for ratification, as it should have been according to the provisions of the Greek Constitution.

⁴⁰ Telegrams of December 29, 1915, January 12, March 23, 25, and May 18, 1916, in *ibid.*, *Documents Diplomatiques*, Supplément, Nos. 40, 43, 47, 48 and 49.

Athens, in November, 1916, the King and his clique continued to be the source by which the enemies of the Entente Powers received all their information.⁴¹ A Greek officer (the late Colonel Phikiori) stationed at Koritza, in Macedonia, having, shortly before his death in 1916, joined the Venizelos movement, divulged the secret. He said that while on duty at Koritza, by order of the General Staff he transmitted by wire every day news concerning the movements of the Allied forces; that the information was, in turn, transmitted by the Staff officers, via Koritza, to the General Staff of the Bulgarian army which was then occupying the city of Monastir; that besides, upon orders received from his superiors, he furnished money to Austrian soldiers who had taken refuge in Greek territory, and pursuant to the same orders, he had allowed these soldiers to escape to the Bulgarian army.⁴²

Another incident which showed the bad faith of Constantine in dealing with the Entente was the decoration by him of Lieutenant Avdis, in April, 1916, for stealing the military secrets of the Allies and communicating them to the Greek General Staff. This worthy tool of Constantine tapped the telephone lines of the French headquarters with a wire in his room, and through an interpreter he was in daily contact with the French army chiefs. He was discovered and arrested by the French military authorities and would have been shot, had it not been for the chivalry shown by General Serrail, who released him, believing that this treacherous officer would be punished by the Royal Greek authorities; but, much to the General's surprise, King Constantine decorated this unworthy officer with the Order of the Savior.⁴³

Some time after the first fall of the Venizelos Cabinet (March, 1915) the Allied admirals in the Mediterranean were confronted with submarine activities, the coasts of Greece offering the best bases for carrying on such piratical warfare. As the Allied Governments knew that the sympathies of Constantine were with Germany, they naturally suspected that the Greek Government, if it did not actually countenance

⁴¹ See *ibid.*, *Documents Diplomatiques*, Nos. 61 to 88, inclusive.

⁴² This charge was made by the newspaper *Nea Hellas* and was not contradicted by the Greek Government, nor was the paper prosecuted. Quoted by the Greek *National Herald* of New York, May 30, 1917.

⁴³ *Le Temps* of April 10, 1916. See *The Near East*, May 5, 1916.

the nefarious work of the Teutons under-sea boats, at least tolerated it. No Allied diplomat believed, however, that the then King of Greece would go to the length of actually assisting the German submarines, but the discoveries which have since been made by the Allies lead to that belief. Some of the secrets connected with these activities came to light upon the advent of Mr. Venizelos to power in August, 1915, after the general elections of June, when his party carried the elections by a substantial majority.

Commander Bouboulis, of the Greek navy — a great-grandson of Bouboulina, the only woman war captain in the world, who commanded a war vessel during the war for Greek independence (1821-1828) — after joining the Venizelos Government in Salonika, made the following revelations to a correspondent of an Athenian paper (the *Nea Hellas*) in October, 1916: In August, 1915, following the orders of the Minister of Marine (of the Venizelos Government), he proceeded to the Corinth Canal to investigate the activities of the Teutonic submarines; that after a diligent search and inquiry, he found that fuel was being supplied from the islet of *Hebreos* in the Gulf of Corinth, which was used as a depot; that gasoline was brought from Athens and delivered to a government official by the name of Karatheodori stationed there; that, further, he noticed evidence on various parts of the coast of Greece that submarines had received fuel. Commander Bouboulis also mentioned the fact, then unknown, that the summer home of Mr. Shlimann, — a former Minister of Greece to the United States — in which his wife resided at the time, was used as a depot for gasoline and that from there small sailing vessels carried the fuel to the German or Austrian submarines in waiting at a distance from the shore.⁴⁴

The Allied commanders accused Constantine not only of giving direct information about the movements of the army under General Serrail in Macedonia, but also of allowing German officers to make reconnoissances of the Allied encampments and trenches and generally to procure all possible information in regard to the Allied army. This accusation was proved well founded not only by circumstantial evi-

⁴⁴ *Greek National Herald*, January 10, 1917. See also *Le Temps* of November 8 and 9, on scandal of Greek deputy Calimassiotis, and *London Times*, November 7, 1916.

dence, but by confessions of certain Greek officers who left the royal army and joined that of the Provisional Government of Salonika. Thus Colonel Tseroulis, in a letter to the *Eleutheros Typos* of Salonika, stated that a superior German staff officer (Prince Lippe) was permitted by the Greek authorities to observe freely the military encampments and defensive works of the Allies.⁴⁵

But the most serious charge made by the Entente Powers against Constantine and his government for helping the Central Powers and their allies, was the surrender to the Teutonic and Bulgarian armies of various Greek fortresses with their full equipment, war material, and provisions.^{45 a}

During the first part of 1916, sinister rumors were circulated in Greece that the King would not oppose the invasion of Greek Macedonia by the Teutonic and Bulgarian armies, and he declared that he would be indifferent to the presence of Bulgarian soldiers in Greece,⁴⁶ notwithstanding the assurances given by his Prime Minister, Mr. Skouloudis, that no Bulgarian soldiers would be permitted to set foot on Greek territory.^{46 a} Constantine considered such a stand on the part of the Greek Government as an act of strict neutrality. His argument and that of the royal clique was that since the Allies occupied Salonika and the hinterland, their enemies had as much right to help themselves to other territory of Greece. In short, instead of taking steps to prevent, by all means, Greek Macedonia from becoming a battle-ground of belligerents, he welcomed it in order to adhere to the so-called policy of "strict neutrality." He forgot or overlooked the fact that the Greek Government from the beginning of the European War, irrespective of party distinctions, had declared officially that Greece would maintain a "most benevolent neutrality" toward the Entente Powers, and particularly Serbia, toward which country such conduct was obli-

⁴⁵ Details in *Greek National Herald*, December 28, 1916. The deciphered telegrams offer abundant evidence on this point. See those dispatches in Greek White Book, *Documents Diplomatiques* Supplément, Part II.

^{45 a} See details in Protocol of Surrender in *ibid.*, *Documents Diplomatiques*, Supplément, No. 25.

⁴⁶ Interviews with newspaper correspondents in *Le Temps*, February 7, 1916, *London Times*, January 11, 1915, and *Daily Mail*, January 3, 1916.

^{46 a} See *Times*, December 18, 1915.

gatory under Article 5 of the Military Convention, which provided that in case either party should declare war against Bulgaria or another Power without the previous agreement and consent of the other, the latter "shall nevertheless maintain a benevolent neutrality towards its ally during the continuation of the war." Therefore, what Greece might concede to the Entente Powers and to Serbia, it could not to their enemies, otherwise the promised "benevolent neutrality" would have been, not only a mere mockery, but in disregard of the stipulation of the Military Convention above quoted, which provided further that in the circumstances referred to, each contracting party was bound to mobilize a given number of troops "in such a manner as to protect its neutrality and consequently the liberty of the movements of the allied army."⁴⁷ It is true that such a proceeding on the part of Greece might have been considered by the Central Powers' as a breach of neutrality; but that was the policy to which the Greek Government was committed, and Germany and her allies had already stoically accepted such an anomalous situation as a lesser evil. They naturally preferred it to the other alternative, namely, of making Greece an enemy, which would certainly have been more detrimental to their interests than to tolerate the indirect assistance given by that country to Serbia and her allies.

✓ To revert to our subject, on May 25, 1916, Bulgarian artillery fired some shots at the most important stronghold of Eastern Macedonia, namely, the Roupel Fortress. This apparent show of force was for the purpose of intimidating the Greek commander after he had refused to comply with the Bulgarian demand to surrender. The next day a confidential telegram (Order No. 1484) was sent from Athens by the Minister of War to the headquarters of the Greek army of that section, then stationed in the city of Serres, by which the superior officer who was in charge of the army in Eastern Macedonia was notified that the previous order, No. 1228 of April 27 (O. S.), 1916, forbidding the surrender of Fort Roupel, should be considered as having been canceled and that the one numbered 663 of March 9 (O. S.) should be carried out. This last order directed the evacuation of the fortress in case of

⁴⁷ See Greek White Book, Doc. No. 4, in Supplement to this JOURNAL, p. 96.

invasion by "hostile armies."⁴⁸ It should be noted that Order No. 663 was issued in March, 1916, when the Greek Government had reasons to believe that the Bulgarian army would advance in order to occupy Fort Roupel; but as soon as it found out that the army of Tsar Ferdinand was not ready for the movement, but that, on the contrary, General Serrail was proposing to occupy the same fortress, Order No. 663 was canceled and in its stead Constantine's Minister of War issued No. 1228 forbidding the surrender of Roupel.

It is beyond doubt now that the strongholds of Greek Macedonia were surrendered by order of Constantine to the Teutonic Powers and their ally, Bulgaria, for the express purpose of strengthening their military situation. An English correspondent, commenting upon the military disadvantages suffered by the Entente Powers on account of the surrender of this stronghold, says that

The Fortress (Roupel) was almost impregnable. It allowed the Bulgarians to dominate the Struma plain, left them free to advance on Serres, and isolated the Greek army corps in Drama-Cavalla provinces from communication with Salonika. It blocked the way of advance on Sofia via the Struma valley. . . . and at once destroyed the value of the superiority which had accrued to the forces of the Allies by the arrival of the Serbian Army. . . . The surrender of Roupel was also a direct menace to the Allies' Army. . . . It permitted the Bulgarians to shorten materially their line of defense and to bring their left wing right down to the banks of the Struma River.⁴⁹

Mr. Skouloudis, the then Greek Premier, in explaining in the *Boulé* the circumstances under which the evacuation of Fort Roupel took place, said that the German commander warned the Greek garrison that he would use force if it was not evacuated and that therefore the fortress was not surrendered in accordance with any agreement with the Central Powers and that the abandonment of Roupel by the Greek troops did not endanger the territorial integrity of Greece. He said that he had lodged a strong protest with the Central Powers against

⁴⁸ St. B. Pronotario, *The Macedonian Tragedies* (in Greek), pp. 10-11 *et seq.* Copies of these orders appeared in the Current History of the *New York Times*, of February, 1917, Vol. V, pp. 318-319 *et seq.* These documents are now published in Greek White Book, *Documents Diplomatiques*, Supplément, in their final shape under Nos. 14, 16, 22 and 25, along with other dispatches connected with the invasion of Greek Macedonia by the Bulgarian and German troops.

⁴⁹ Crawford Price, *Venizelos and the War*, pp. 163, 164, 165, 169.

their action.⁵⁰ Mr. Skouloudis in his capacity as Minister for Foreign Affairs told the same story to the ministers of Great Britain, France, and Russia who complained against the action of the Greek Government in favoring the Central Powers by the surrender of such a stronghold.⁵¹

The official documents published by the present Greek Government after the overthrow of Constantine prove conclusively, however, that the surrender of this and other fortresses to the armies of the Central Powers was due to a prearranged understanding with Constantine and at least some of his ministers.⁵²

The surrender of the keys of Macedonia to the Central Powers and their allies, coupled with all the various incidents which preceded that event, compelled the Entente Powers to intervene energetically in Greece. They presented a series of ultimata which eventually led to the expulsion from Hellas of the German field marshal Constantine who, during his short reign, had disgraced both the Hellenic throne and betrayed the people of his adopted country.

THEODORE P. ION.

⁵⁰ Speech in the Boulé, May 23 (O. S.), 1916, Greek White Book, Doc. No. 60; for protests to Germany, Austria, and Bulgaria, referred to, see *ibid.*, Docs. Nos. 53, 54, and 55; for denial of previous agreement for occupation of Roupel, see *ibid.*, Doc. No. 61; all of said documents being printed in Supplement to this JOURNAL for April, 1918. See also *ibid.*, *Documents Diplomatiques*, Supplément, No. 27.

⁵¹ London *Times*, June 1, 1916.

⁵² See the following documents in the Greek White Book printed in the Supplement to this JOURNAL, for April, 1918:

Telegram of Lieutenant-General Bairas to the Greek General Staff, dated April 27 (O. S.), 1916, Doc. No. 45.

Telegram of General Yanakitsas, Minister of War, to the commandant of the 4th Army Corps, dated April 28 (O. S.), 1916, Doc. No. 46.

Telegram of Mr. Skouloudis to Mr. Naoum, Minister of Greece at Sofia, dated April 29 (O. S.), 1916, Doc. No. 47.

Telegram from Greek Legation at Paris, dated May 24 (O. S.), 1916, Doc. No. 63.

See also Greek White Book, *Documents Diplomatiques*, Supplément, No. 47, telegram, dated March 10, 1916, sent by Constantine to the German Government through the Greek Minister at Berlin, in which Constantine says: "General Falkenhäusen has made known to us the intention of the Allied (Central) Powers' fleet to occupy the Demir Hissar pass [in which Fort Roupel is situated] . . . We replied that we were waiting for the Imperial German Government to give us, through its minister here, the declaration which has already been indicated."

EDITORIAL COMMENT

LORD HALDANE'S DIARY OF NEGOTIATIONS BETWEEN GERMANY AND ENGLAND IN 1912

A distinguished English lawyer and judge once happily said that a little truth would leak out even from the most carefully prepared affidavit. Not a little, but a very great deal of truth is appearing in the carefully prepared documents which have recently seen the light, such as Lichnowsky's Memorandum and documents of a similar nature.

Viscount Haldane has wisely followed the lead of the late Imperial German Ambassador to London by issuing an account of his mission to Berlin in 1912; or rather the British Government, unlike Lichnowsky's master, has itself issued the report of its minister of peace, instead of confiscating Lord Haldane's diary, or exposing its illustrious author to charges of unpatriotic conduct and to fear of criminal prosecution.

Without attributing to the British Government impeccability or intimating that its servants are not of the race of Adam, the reason for the publication of Lord Haldane's diary, as yet only in part, is evident from the most casual inspection; for his mission was one conceived and executed in the desire for peace, and the very failure of the mission to accomplish its purpose is a tribute to the statesman who undertook it and redounds to the credit of the government permitting it, of which Lord Haldane was then a member.

For reasons which have become or are becoming common property, the relations between Great Britain and Germany were very strained for some years past, especially so since the dismissal of Bismarck in 1890 by his youthful Imperial and imperious master, William II, and the death of Queen Victoria, and they were felt to be grave not merely by the inner circle of the government, but by the well-informed public as well. Indeed, the settlement of outstanding questions with France and with Russia was not due solely to the desire of the British Government to be on good terms with its neighbor across the Channel, and with its neighbor in the Far East, but to the presentiment that some day Great

Britain might find itself at war with Germany, which was more than a possibility, in view of the unfriendly disposition, to put it mildly, shown by the German people at Britain's conduct in the Transvaal, to mention but a single instance. In international conferences the opposing policies of the two countries caused not a little friction, and at the Second Hague Peace Conference of 1907 the smoldering distrust by each of the motives of the other leaped into flame on more than one occasion. Indeed, in a certain sense, and on vital questions, as they have turned out to be, that Conference was little more than a struggle of each for position in the conflict which the delegates of participating Powers felt to be impending between the two countries.

To recall but a single incident. In the eighth plenary session of the Conference, held on October 9, 1907, Sir Ernest Satow, on behalf of Great Britain, said, in speaking of the proposed convention relating to the use of mines, that adequate consideration had not been given to the "right of neutrals to protection, or of humanitarian sentiments which can not be neglected"; and after calling attention to the defects of the project adopted by the Conference, he declared on behalf of his government that "it will not be permissible to presume the legitimacy of an action for the mere reason that this convention has not prohibited it. This is a principle which we desire to affirm, and which it will be impossible for any state to ignore, whatever its power." Immediately Baron Marschall von Bieberstein, feeling that the shaft was directed toward him, arose, and repeating views which he had already expressed in the commission, said: "Conscience, good sense, and the sentiment of duty imposed by principles of humanity will be the surest guides for the conduct of sailors and will constitute the most effective guaranty against abuses." Amid a distressing and breathless silence on the part of his auditors, and in a voice choked with passion, and his huge frame trembling with emotion he continued: "The officers of the German navy, I loudly proclaim it, will always fulfill in the strictest fashion the duties which emanate from the unwritten law of humanity and civilization."

Still the situation, although dangerous, was not hopeless, and responsible statesmen of Great Britain sought to postpone, if they could not wholly avert, the storm which had already become much larger than a man's hand. The diplomacy of Sir Edward Grey was successful for the time in preventing the wars of the Balkan states from spreading to and involving the larger European states, and on the eve of

the great war of 1914 he negotiated an agreement with Prince Lichnowsky conceding the rights that Germany claimed in Mesopotamia and in connection with the Bagdad Railway. During the course of the negotiations preceding the war, and indeed the very day before the fatal first of August, Sir Edward Grey, speaking in the first person to the British Ambassador at Berlin, wrote:

I said to German Ambassador this morning that if Germany could get any reasonable proposal put forward which made it clear that Germany and Austria were striving to preserve European peace, and that Russia and France would be unreasonable if they rejected it, I would support it at St. Petersburg and Paris, and go the length of saying that if Russia and France would not accept it, His Majesty's Government would have nothing more to do with the consequences.¹

And the day previous to this, Sir Edward Grey had sent this remarkable instruction to the British Ambassador at Berlin:

You should speak to the Chancellor in the above sense, and add most earnestly that the one way of maintaining the good relations between England and Germany is that they should continue to work together to preserve the peace of Europe. . . .

And I will say this: If the peace of Europe can be preserved, and the present crisis safely passed, my own endeavor will be to promote some arrangement to which Germany could be a party, by which she could be assured that no aggressive or hostile policy would be pursued against her or her allies by France, Russia, and ourselves, jointly or separately.²

The desire of Great Britain, however, to preserve friendly relations with Germany, although it found decided expression in times of storm and stress, was not limited to them, but was evident in all its dealings with Germany and especially so after a crisis had been passed, as in the Moroccan dispute of 1911, in order to prevent a recurrence in the future. Of this desire no more striking example can be given than that of Lord Haldane's mission, undertaken, as stated, after the Moroccan incident, before the first of the Balkan wars of 1912 and 1913, and two years in advance of the European catastrophe.

The choice of Lord Haldane for this peaceful mission was as flattering to Germany as it was appropriate on the part of the Ministry, inasmuch as in position he was Secretary of War, by training, a student of Göttingen, and by predilection a philosopher in the German sense of the term, having to his credit, as joint translator, Schopenhauer's "World as Will and Idea" (3 volumes, 1883-1886). He was, there-

¹ British Blue Book (No. 1), Doc. No. 111.

² *Ibid.*

fore, in one sense of the word "made in Germany," possessed of a knowledge of its history, of its literature, and of its language, which he spoke with ease, correctness, and elegance.

Lord Haldane proceeded to Berlin in 1912, and on February 8th of that year he states that he had an interview with the Imperial Chancellor, then von Bethmann-Hollweg, lasting an hour and a half, of which his lordship has preserved the following account: "I began by giving him the message of good wishes for the conversations and for the future of Anglo-German relations with which the King had intrusted me at the audience I had before leaving."¹ This, of course, was the way of broaching matters in a monarchical country; but as Lord Haldane was intent on business of a really serious nature, he lost no time in stating the object of his mission, which he thereupon did: "I then said that perhaps it would be convenient if I defined the capacity in which I was in Berlin, and there to talk to him; and I defined it as above intimated."²

In reply to the remark of the Imperial Chancellor that he did not care to make any observations and that he preferred Lord Haldane to continue, his lordship, in accordance with the instructions of Sir Edward Grey, thus proceeded:

I told him that I felt there had been a great deal of drifting away between Germany and England, and that it was important to ask what was the cause. To ascertain this, events of recent history had to be taken into account. Germany had built up, and was building up, magnificent armaments, and with the aid of the Triple Alliance she had become the center of a tremendous group. The natural consequence was that other Powers had tended to approximate. I was not questioning for a moment Germany's policy, but this was the natural and inevitable consequence in the interests of security. We used to have much the same situation with France when she was very powerful on the sea that we had with Germany now. While the fact to which I referred created a difficulty, the difficulty was not insuperable; for two groups of Powers might be on very friendly relations if there was only an increasing sense of mutual understanding and confidence. The present seemed to me to be a favorable moment for a new departure. The Morocco question was now out of the way, and we had no agreements with France or Russia except those that were in writing and published to the world.¹

Naturally, in a country given to secret alliances, the Chancellor was dubious on this point, and, interrupting Lord Haldane, asked if this were really so, to which his lordship replied that "I could give him the assurance that it was so without reserve, and that in the situation which now existed I saw no reason why it should not be possible for us to enter

¹ *New York Times*, June 2, 1918, p. 4.

into a new and cordial friendship, carrying the two old ones into it, perhaps to the profit of Russia and France as well as Germany herself." This is not the policy of dividing in order to conquer, but of uniting in order to preserve peace. To this statement on the part of Lord Haldane, the Imperial Chancellor replied, as reported by his lordship, that "he had no reason to differ from this view."

In reply to an inquiry concerning the military preparations of the year before, in connection with the Morocco incident, Lord Haldane stated to the satisfaction of the Imperial Chancellor that "no preparations had been made which were other than those required to bring the capacity of the British army in point of mobilization to something approaching the standard which Germany had long ago reached"; and Lord Haldane apparently closed this particular part of the interview with the somewhat frank and curt statement that "we could not be caught unprepared." This explanation seemed to clear up the doubt in the Imperial Chancellor's mind, and he is reported as saying that he understood the position which Lord Haldane had indicated.

Taking advantage of the understanding thus reached, Lord Haldane used language which von Bethmann-Hollweg doubtless recalled, although he apparently disregarded it in the latter days of July and the first days of August, 1914, that "if Germany had really, which I did not at all suppose, intended to crush France and destroy her capacity to defend herself, we in England would have had such a direct interest in the result that we could not have sat by and seen this done."

Omitting the portions of Lord Haldane's diary dealing with the proposal of the Imperial Chancellor that neither Power should enter into combinations against the other, the gentlemen in conference came to the German fleet, as to which the Imperial Chancellor asked Lord Haldane whether he would like to make observations, to which his lordship, speaking in the first person, said he must.

On this point Lord Haldane spoke with the utmost frankness, saying: "What was the use of entering into a solemn agreement for concord and against attack if Germany at the same moment was going to increase her battle fleet as a precaution against us; and we had consequently to increase our battle fleet as a precaution against her?" To this question thus put, Lord Haldane himself answered that "This was vital from our point of view, because we were an island Power dependent for our food supplies on the power of protecting our commerce, and for this we needed the two-Power standard and a substantial

preponderance in battle fleets." By the expression "two-Power" battle fleet his lordship meant, and the Imperial Chancellor understood, that the British battle fleet should be equal in power to that of any two European nations.

The Imperial Chancellor, on his part, retorted that "it was absolutely essential to Germany to have a third squadron in full readiness for war," to which Lord Haldane replied that, admitting the right of each to do as it thought best, Great Britain would need to increase its fleet. Asked if that were necessary "if we had a friendly agreement," Lord Haldane stated that an agreement would be prejudiced if Germany carried out its program of a third ship every second year, inasmuch as Great Britain would feel itself obliged to lay down two for every German keel.

This remark of Lord Haldane had cut to the quick, and while promising that he would think the matter over, the Imperial Chancellor said that a third squadron was vital, that new ships were necessary for it, and asked if Lord Haldane could find a way out, as "my admirals," to quote the Imperial Chancellor, "are very difficult," to which Lord Haldane replied in kind, "that was an experience which we sometimes found in England also."

This was a busy day and a not inauspicious beginning. On the day after — the ninth — not only the Admiral of the Navy, von Tirpitz, but the Kaiser, himself, unannounced, made his appearance, and the entire situation was discussed by those in Germany having the final word in matters political and naval.

The tone of the interview was friendly; but Lord Haldane notes a feeling in his diary that he had come to the most difficult part of his task. The utmost he was able to get was, to quote his own words, "The Emperor was so disturbed at the idea that the world would not believe in the reality of the agreement unless the shipbuilding program was modified that he asked what I would suggest."

The crux of the matter was the unwillingness of the German authorities to change their law of naval construction, and seeing this, Lord Haldane said, in reply to the Emperor's query "what would he suggest," that "he might at least drop out a ship." To this the Admiral objected, and Haldane thereupon made the suggestion "to spread the tempo," and thus reports the progress:

After much talking we got to this, that, as I insisted that they must not inaugurate the agreement by building an additional ship at once, they should put

off building the first ship till 1913, and then should not lay down another till three years after (1916), and not lay down the third till 1919.¹

This was the German side of it. Next for the English.

Quite naturally, Admiral von Tirpitz wanted an understanding as to English shipbuilding, and quite naturally stated that the two-Power standard was "a hard one for Germany" and that "Germany could not make any admission about it." To this Lord Haldane replied, and because of its importance his exact language is quoted:

I said it was not a matter of admission. Germany must be free and we must be free, and we should probably lay down two keels to their one. In this case the initiative was not with us but with them. An idea occurred to all of us on this observation that we should try to avoid defining a standard proportion in the agreement, and that, indeed, we should say nothing at all about shipbuilding in the agreement, but if the political agreement was concluded the Emperor should at once announce to the German public that this entirely new fact modified his desire for the fleet law as originally conceived, and that it should be delayed and spread out to the extent we had discussed. For the rest, each of us would remain masters in our own houses as far as naval matters were concerned.²

The Kaiser was reported by Lord Haldane to have very properly said that the fact of the agreement was "the key to everything." It would need to be put into proper form, and the Kaiser said, according to Haldane, that "the Chancellor would propose to me this afternoon a formula which he had drafted." Therefore, Haldane was to see the Imperial Chancellor again, and to return home to report the results of his mission to his colleagues.

The question bristled with difficulties, and the Imperial Chancellor said, as quoted by Haldane, that "forces he had to contend with were almost insuperable. Public opinion in Germany expected a new law and the third squadron, and he must have these." Lord Haldane repeated what he had previously said, that he could not contest Germany's right, and asked, "but why not postpone the shipbuilding for longer and adapt the law accordingly?" In reply the Imperial Chancellor said that the new squadron and the new law were essential; that he would consult the experts as to retardation; and Lord Haldane promised to let him know privately, upon his return, the state of feeling in England about von Tirpitz's proposals.

It will be observed that the Kaiser and his advisers had definite

¹ *New York Times*, June 2, 1918, p. 4.

² *Ibid.*

notions as to the naval policy to be pursued, apparently because these matters were uppermost in their minds, but that when the question was broached of preserving peace by means of an agreement, they turned to Haldane, apparently because such matters were uppermost in his mind, and not in theirs.

Additional observations on these important negotiations will be made in a future number.

JAMES BROWN SCOTT.

THE GERMAN-SWISS COMMERCIAL AGREEMENT

The right of a neutral to supply a belligerent with commodities, even such as relate to war, is unquestioned. The right of the belligerent in turn to withhold from the neutral what he himself needs or what he can not afford to let pass through the neutral into his enemy's hands, is also unquestioned. Somewhere between these extremes the degree of permissible trade must lie. It is an economic and political question rather than a legal one, and complicated in the present war by the overwhelming superiority of the belligerent to the neutral influence. Now, of all the neutrals, the case of Switzerland is the hardest, because she is an inland state, needing to import coal and iron and foodstuffs, but having no ships and seaports to do it with, completely dependent therefore upon the will of one or other of the warring states which border her.

Early in the war there was no shortage of bread grain, but the raw material problem was apparent to the Swiss Government from the first. Thus the Minister for Foreign Affairs, Herr Hoffmann, in June, 1915, stated his country's point of view:

Our industry, extensive and varied as it is, is entirely dependent on the world's markets. It is therefore impossible to close our doors completely to one or other group of belligerents. If our industry is to live, it must be able to re-export into all countries the articles which it has manufactured with the raw materials supplied by one or other of the belligerents.

But the tendency of each set of belligerents was to insist, as far as possible, that what it furnished did not inure to the benefit of its enemy and that some compensation should be made for its sacrifice in letting Switzerland have material which it wanted for itself. An example of the first-mentioned principle was the prohibition of grain exports by the Swiss Government and the adoption after an interval of the

S. S. S., the Swiss Society of Economic Surveillance, patterned after the Dutch Oversea Trust, holding nearly all imports for domestic consumption solely. An example of compensations was the insistence by the German Government that iron and coal would be sent to Switzerland only if a certain amount of foodstuffs were sent by Switzerland in return, and this was to include not only food originating in the country, like cattle and dairy products, but also imports of food and of many other things, such as forage, lubricating oil, cotton and cotton fabrics, imported into Switzerland on German account. Thus, unless cotton (available for explosives) were let pass to Germany, Swiss industries bade fair to be starved by having their coal supply cut off.

The outcome of this controversy was an agreement by which coal to the amount of 253,000 tons was furnished by Germany, with the iron and steel required; German-owned goods in Switzerland were to be held by the government until the end of the war, and foodstuffs were furnished to Switzerland by the Entente Powers. Such was the arrangement until the spring of 1918 when the coal supply was reduced to 200,000 tons. At that time Germany appears to have insisted that no German coal should be used for the manufacture of any articles exported to her enemies. This was changed, however, to a demand that French coal to a minimum of 85,000 tons a month should be supplied by France. France had made this offer, provided no German restrictive conditions were annexed to it, so a temporary deadlock resulted. There was dispute also as to the price of German coal, which was set at \$36 a ton. This was slightly reduced with a larger reduction for domestic coal up to 60,000 tons a month.

On May 22, 1918, a German-Swiss economic convention was signed. The French delivery of coal, which was not mentioned in it, was to have nothing to do with German deliveries. The writer has not the text of the convention nor information as to it except for the rather obscure references of the *London Times*. But the theory which governed seems to have been that, roughly speaking, the coal used in the manufacture of articles for Entente use should be furnished by France; that foodstuffs which the United States, as producer, might furnish, should not be objected to, and that the needed German coal for other purposes than those mentioned should be supplied up to 200,000 tons a month. Considerable food deliveries to Germany were obligatory. This then, or something like it, is the compromise arrived at between the two sets of rights with which this discussion began.

Granting that the neutral may fairly be ground between the upper and the nether millstones of belligerent necessities and animosities, the outcome in this case seems not unfair. But it may be questioned whether Switzerland is satisfied. The price of coal was considered unduly high, and as the *Tagwacht* of Berne said, none of the belligerents had ever considered Switzerland in any other light than in that of their own interests.

Is there any just guiding principle discoverable in such a problem as this?

By an obscure yet relentless system of economic bargaining, belligerents try to strike one another through the neutral. They forfeit thereby the neutral good will. They do serious damage to an innocent neighbor whose only fault is one of geographical position. Practically it amounts to an attempt to enlarge the old rule against contraband. Formerly the belligerent hindered the trade in contraband by intercepting it at sea if he could. This was expanded by the doctrine of the indirect voyage. Now he tries to hinder it by threats and trade reprisals. Should blockade be abolished and trade in contraband be made illegal, with the onus of prevention on the neutral, such practices as we have considered would disappear. But short of such a drastic, almost unthinkable, remedy, the writer does not see any guiding principle to apply or any remedy if the neutral or a league of neutrals is not strong enough to insist upon its interests as paramount to belligerent interests.

THEODORE S. WOOLSEY.

PRIVATE PEACE PARLEYS

From time to time statements occur in the press to the effect that a subject of the enemy — acting unofficially, be it said — has broached the question of peace and the terms upon which it might be concluded to an American citizen residing permanently, temporarily, or passing through some neutral country, and from time to time the press informs its readers that an American citizen, Mr. John Doe, Mr. Richard Roe, or some other person known to the law, residing in this country, has discussed questions of peace with a diplomatic agent of a foreign government, or that the American citizen in question has gone abroad to discuss such questions with officials of foreign governments or with unofficial persons, or that, residing in a neutral country, he has entered

into relations with official or unofficial persons of the enemy country whom he has chanced to meet in some neutral country where both happen to be.

Admitting that John Dce, Richard Roe, *et al.*, are inspired by the best of motives, that they are honest and upright persons, they nevertheless come dangerously near the strong arm of the law, either when they engage in a self-imposed mission of the kind specified, or without making overtures, allow themselves to be drawn into discussions even although these do not assume the shape of formal negotiations. Even a democracy needs its agents for purposes of government, and while the citizens can and indeed, should control the policy of the country, the necessity for a division of labor obtains in the business of government as well as in the ordinary pursuits of daily life.

In the United States there is a threefold division of power. All legislative powers granted by the Constitution are vested in the Congress; the executive power is vested in the President; the judicial power in the Federal Courts. An examination of the second article of the Constitution, dealing with the executive branch of the government, discloses that the President "shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls," and that "he shall receive ambassadors and other public ministers." That is to say, the President shall choose the agents in whom he has confidence to conduct the foreign affairs of the country, and if the Senate concurs in his choice, they thereupon become agents of the United States for this purpose. He receives ambassadors and other public ministers without the advice and consent of the Senate, and necessarily he determines whether he shall or shall not receive them, as well as the conditions upon which they may be received, involving, as this action on his part does, the recognition of the independence of the country sending them, or of its right to send them under the circumstances. So much for selecting and receiving diplomatic agents.

In the matter of treaties the President again, as would be expected, is authorized to direct the negotiations of the persons whom he has appointed; but as they are nominated with the advice and consent of the Senate, so their labors are to be passed upon by the confirming power. As by the second section of the second article of the Constitution the President is vested with the power "by and with the advice and consent of the Senate to make treaties, provided two-thirds

of the Senators present concur," it was foreseen by the framers of the Constitution that there would need to be under it, as under the Articles of Confederation, a department of foreign affairs to aid the President in their conduct. Therefore it was provided by the first Congress under the Constitution, in its Act of July 27, 1789, that ¹

There shall be an Executive department, to be denominated the Department of Foreign Affairs, and that there shall be a principal officer therein, to be called the Secretary for the Department of Foreign Affairs,² who shall perform and execute such duties as shall from time to time be enjoined on or intrusted to him by the President of the United States, agreeable to the Constitution, relative to correspondences, commissions or instructions to or with public ministers or consuls, from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs, as the President of the United States shall assign to the said department; and furthermore, that the said principal officer shall conduct the business of the said department in such manner as the President of the United States shall from time to time order or instruct.

Here again we have an agent of the President, in the conduct of foreign affairs, not to be selected at random and without formality, but like other officers of the United States, to be appointed by and with the advice and consent of the Senate. The President may appoint Messrs. John Doe and Richard Roe, but if he does not, it would seem to follow by necessary implication that they can neither negotiate abroad with foreign governments nor within the United States represent the government of the Union.

But we do not need to argue the question as if it were one of theory, or to subject the clauses which have been quoted to the canons of constitutional or statutory interpretation. Within ten years of the establishment of the government under its provisions, and likewise within ten years of the passage of the Act creating the Department of State,² the legislative and the executive branches of government cooperated in the passage of the Act of January 30, 1799, contained in the first volume of the Statutes at Large, in company with the Constitution, and the Act of Congress creating the Executive Department. The young republic had already had experience with Messrs. John Doe and Richard Roe in the person of one George Logan, an American

¹ 1 Statutes at Large, 28.

² By the Act of September 15, 1789, ch. 14 (1 Statutes at Large, 68), the name of the Department of Foreign Affairs was changed to that of the Department of State.

scientist and politician of Quaker parentage, who conceived the idea of proceeding to France in his private capacity in the year 1798, when relations were broken off between that country and his own, in order to settle the claims and causes of difference between the two countries, which John Marshall, Charles Cotesworth Pinckney, and Elbridge Gerry, special envoys of this country to France, appointed for this purpose by President John Adams, were unable to do.

The Logan mission was no ordinary event, and without accomplishing its purpose in France, it created a great stir in the United States. The general feeling may perhaps best be voiced by Washington, who was at that time an ex-President and Commander of the American Army in the event of a war with France. In describing an interview with Dr. Blackwell and Dr. Logan — for the latter was a doctor of medicine as well as of politics — Washington himself said:

In a few minutes I went down, and found Rev. Dr. Blackwell and Dr. Logan there. I advanced towards and gave my hand to the former; the latter did the same towards me. I was backward in giving mine. He possibly supposing from hence, that I did not recollect him, said his name was Logan. Finally, in a very cool manner, and with an air of marked indifference, I gave him my hand, and asked *Dr. Blackwell to be seated*; the other *took* a seat at the same time. I addressed *all* my conversation to Dr. Blackwell; the other *all* his to me, to which I only gave negative or affirmative answers, as laconically as I could, except asking how Mrs. Logan did. . . .

About this time Dr. Blackwell took his leave. We all rose from our seats, and I moved a few paces towards the door of the room, expecting the other would follow and take his leave also. Instead of which he kept his ground. . . . I remained standing, and showed the utmost inattention to what he was saying. He observed that the situation of our affairs in this country, and the train they were in, with respect to France, had induced him to make the voyage in hope, or expectation or words to that effect, of contributing to their amelioration. This drew my attention more pointedly to what he was saying, and induced me to remark, that there was something very singular in this; that *he*, who could only be viewed as a private character, unarmed with proper powers, and presumptively unknown in France, should suppose he could effect what three gentlemen of the first respectability in our country, specially charged under the authority of the government, were unable to do.

We may readily admit that "the other," to use Washington's method of referring to Logan, was adequately punished for whatever indiscretion he may have committed in visiting France in a self-appointed diplomatic capacity, inasmuch as the Father of his Country could even abash and disconcert such a man as Gouverneur Morris.

It was not, however, enough to punish the individual after the offense had been committed; it was the part of wisdom to prevent, if possible, its commission. This the Congress attempted to do by rendering acts such as Logan's and similar conduct a high misdemeanor, and punishable as such in the following terms, in a statute of January 30, 1799:

That if any person, being a citizen of the United States, whether he be actually resident, or abiding within the United States, or in any foreign country, shall, without the permission or authority of the government of the United States, directly or indirectly, commence, or carry on, any verbal or written correspondence or intercourse with any foreign government, or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government, or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or defeat the measures of the government of the United States; or if any person, being a citizen of, or resident within the United States, and not duly authorized, shall counsel, advise, aid or assist in any such correspondence, with intent, as aforesaid, he or they shall be deemed guilty of a high misdemeanor, and on conviction before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months, nor exceeding three years.¹

This Act of Congress is still on the statute book as Section V of the Act of March 4, 1909, commonly called the Federal Penal Code of 1910. The statute apparently has effected its purpose, for although attention has been called to it from time to time, and it has been invoked to prevent the conduct which it penalizes, no prosecution has ever been instituted under it. John Doe, Richard Roe, *et al.* would, however, do well to ponder its terms, lest unwittingly they may embarrass the administration and prejudice the good people of these United States.

JAMES BROWN SCOTT.

THE GERMAN DEMAND FOR RINTELEN

The peremptory demand of Germany, as communicated in April to the Department of State by the Swiss Minister at Washington, for the surrender of Capt. Lieut. Rintelen in exchange for Siegfried Paul London, an alleged American citizen condemned to ten years' penal servitude by German authority and held in its custody, deserves more than casual notice.

¹ Statutes at Large, 613.

After adverting to the exercise of "judicial clemency" by the Governor General of Warsaw in commuting the sentence of London who had been condemned to death by court-martial "for war-treason as a spy," the German note calls attention to the failure of the efforts of the Imperial Government "to effect an improvement in the situation" of Rintelen who, it is said, "passed into the hands of the American authorities by reason of acts of the British Government, contrary to international law."

Acknowledging failure to bring to a halt criminal proceedings brought against him in America and to secure his release, and in order to lend greater emphasis to the protests said to have been lodged with the United States, it is declared that the German Government contemplates "some appropriate measures of reprisal." It is added that that Government "would, however, prefer to avoid the contingency that persons be taken and made to suffer because the Government of the United States was apparently not sufficiently cognizant of its international obligations toward a German subject."

The German note thus appears to raise two points: first, that the United States has violated some legal obligation to Germany, its enemy, in subjecting Rintelen to criminal prosecution; and secondly, that it is not unreasonable, in the circumstances of the case, to threaten to cause physical suffering to innocent persons in order to enforce compliance with the demand made.

The complaint against the criminal prosecution seems to be based on the theory that Rintelen so entered the domain of the United States or was so placed within its control as to become exempt from the criminal jurisdiction of the nation, notwithstanding his previous defiance of its sovereignty by the violation of its laws within its territory. It is understood that Rintelen was seized by the British in 1915, while attempting to escape to Germany by means of a fraudulent Swiss passport, and following his illegal activities in the United States. Sometime later, in 1917, he was brought by British agents to American territory and there surrendered to American authorities. He was an enemy of Great Britain within its control and transferred with its consent and with a view to his prosecution to the state from whose justice he was a fugitive, and which had also then become the enemy of Germany. It is not believed that any rule of international law imposed upon the United States an obligation to look beyond the fact that Rintelen was willingly surrendered by the state within whose

custody he was held. It is not admitted that the right to prosecute him for violating American laws in 1915 was dependent upon the procedure adopted by Great Britain in effecting his arrest. The general right to subject Rintelen to criminal prosecution before an American tribunal could be fairly challenged by Germany only on the ground that the United States had itself unlawfully removed or secured him from German custody. Such was not the case.

It may be suggested that as an enemy person attached to a military service, Rintelen was entitled to special immunities. It is not understood, however, that by virtue of international law a person normally entitled to the benefits of treatment commonly accorded a prisoner of war, is exempt from prosecution for criminal acts committed prior to his captivity and in time of peace. Thus, according to Section 71 of the Rules of Land Warfare issued by the Office of the Chief of Staff of the United States Army, under date of April 15, 1917, "A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own army."

The acts laid at the door of Rintelen deserve brief attention. In May, 1917, he was convicted of having violated, prior to his departure from the United States, the Sherman antitrust law through the attempt to prevent the shipment of munitions abroad. In November, 1917, he pleaded guilty to a charge of conspiring to defraud the United States by fraudulently obtaining a passport in 1915. In February, 1918, he was convicted of having attempted to blow up the British transport *Kirk Oswald* in 1915. As the commission of this offense was prior to the enactment of the Espionage Act, Rintelen was subject to the relatively light penalty (eighteen months' imprisonment and a fine of \$2000) prescribed by an earlier section of the Federal Criminal Code. In imposing sentence, the District Judge expressed regret that it did not lie within his power "to deal out adequate punishment."

Germany could not undertake to ratify these activities within the territory and against the sovereignty of a state with which it was then at peace, without subjecting itself to lasting censure. Nor would imperial ratification have deprived the United States of its normal right of jurisdiction. The case of Rintelen bears no resemblance to the extraordinary situation when, after a Canadian force had, in 1837 on grounds of self-defense, entered American territory and destroyed the steamer *Caroline*, causing the death of certain of its occupants,

the British Government saw fit to ratify the acts of the participants and thereby to endeavor to exempt one of them from prosecution.

As to the propriety of the threat to make reprisals, the response of Secretary Lansing, dated June 4th, set forth definitely the position of his country. He said:

The threat of the German Government to retaliate by making Americans in Germany suffer clearly implies that the Government proposes to adopt the principle that reprisals occasioning physical suffering are legitimate and necessary in order to enforce demands from one belligerent to another. The Government of the United States acknowledges no such principle and would suggest that it would be wise for the German Government to consider that if it acts upon that principle, it will inevitably be understood to invite similar reciprocal action on the part of the United States with respect to the great numbers of German subjects in this country.

These words admit rather than deny that a belligerent can not dispense with retaliation. They emphasize and suggest, however, vitally important conditions which must exist before resort can be lawfully had to measures of so-called reprisal, and before a threat to have recourse thereto can be justly made. If, for example, the enemies of Germany had at the outset of the war in the course of offensive operations undertaken to bombard undefended places, single out hospitals as objectives for attack, poison wells, deny quarter, torture prisoners, make perfidious use of flags of truce, and employ the Red Cross as a shield for guns, the shocked and outraged Teutons might well have engaged in sternest measures of protective retribution. Justification would have been due to the acknowledged lawlessness of the conduct sought to be checked. On the other hand, neither Germany nor any other state taking part in war has the right under the law of nations to inflict or threaten to inflict injury upon innocent enemy persons within its control as a means of preventing its adversary from exercising its lawful rights as a belligerent or its normal rights of jurisdiction as a sovereign. To embark upon measures of reprisal in order to compel a state not to do what it has a right to do, is as lawless on principle as the act of a highway robber or a blackmailer. If, on account of war, a belligerent attempts to excuse such conduct towards its adversary on the ground of military exigency, it squarely takes the position that there are no laws of war which it is bound to heed with respect to the enemy when a strategic or other advantage to itself is thereby forfeited. This is doubtless the basis of the German theory of *Notrecht*. But it is not one which has prevailed among civilized states generally;

nor is it likely to, unless Teutonic philosophy pervades and overcomes the world.

The German Foreign Office is believed to be too conversant with the principles of jurisdiction to maintain seriously that the United States has violated international law in establishing Rintelen's guilt and in dealing with him as a criminal. The suggestion that the treatment of him as such constitutes internationally illegal conduct must be taken to be merely a pretext for a threat to resort to illegal measures which, even as so disguised, is none the less perceived in its true aspect. The nature of the effort to bring about the release of this particular individual betrays the fact that German authority in Imperial hands is still obsessed with an amazingly distorted notion of American character and institutions. No proposal accompanied by such a threat could have won acceptance here. Nor is any proposal concerning the action of the United States, likely to fare better if acceptance necessitates the perversion of criminal justice.

CHARLES CHENEY HYDE.

IN MEMORIAM

LOUIS RENAULT

International law has lost its most distinguished exponent in the death of Monsieur Louis Renault on February 7, 1918, unexpectedly, without a suggestion of warning, after meeting his class on that day, and for the last time. A Frenchman by birth and the trusted adviser and representative of the French Government on numerous occasions, he was yet a citizen of the world, revered by his former students, holding honorable and responsible positions in well-nigh every country, respected by foreign governments, and treated with deference by their delegates in international conferences, where power and political considerations too often outweigh merit and the regard for justice. Well advanced in years — he was born on May 21, 1843 — he might reasonably have hoped to render still further services to international law and to his country in its defense of that law, in the conference at the close of the war, of which he would undoubtedly have been a member. And if he had thus rounded out the labors of a lifetime, he would have made humanity still further his debtor.

Monsieur Renault was a teacher by profession; an international lawyer by practice; a writer on occasion. He entered the Paris Law School as a student in 1861, and, after a course of exceptional distinction, graduated with highest honors. From 1868 to 1873 he was professor of Roman and of commercial law in the University of Dijon, and from 1873 until the very day of his death, he was professor in the Faculty of Law of the University of Paris. For the first three months after his transfer to Paris he taught criminal law, substituting for the professor of that subject. During 1874-1875 he substituted for the professor of international law, and continued, after the death of the titular professor in that year, in charge of the course until 1881, when he himself was appointed to the chair of international law, occupied by Royer-Collard from 1830 to 1864 (for whom it was originally created), and by Charles Giraud from 1865 to 1875. In addition, he was professor of international law in the School of Political Sciences, and in both of these positions he came into contact with students from all countries, whom he largely attracted by his presence in the Faculty of Law and in the School of Political Sciences, where he taught the law of nations as a branch of general jurisprudence and of positive law, bringing to its exposition and its application the conceptions of the philosopher, the experience of the historian, and the training of the jurist. His success in the classroom was phenomenal and would alone have placed him among the glories of each of the institutions with which he was connected. He was, as he himself modestly said, a professor at heart.

His career as a practitioner of international law began in 1890, when he was appointed juriconsult of the Ministry for Foreign Affairs by M. Ribot, then Minister for Foreign Affairs, who had the post specially created for him. From his entrance upon the performance of its duties until his death he was the one authority in international law upon whom the Republic relied. Under his eye the foreign policy of France passed in so far as it depended upon the law of nations; through his hands the projects of the Foreign Office passed, putting into effect the principles of international justice, directed and controlled in each instance by a generous, enlightened, seasoned, and passionately honest intellect. In appreciation of his services in the Ministry for Foreign Affairs he was accorded the titular rank of Minister Plenipotentiary and Envoy Extraordinary.

It would be wearisome to enumerate the international gatherings in which he represented his government and where, respected as a

plenipotentiary of France, he gradually became recognized as the counselor of the conference and of its members as well.

In the different and yet not unrelated field of international arbitration he enjoyed a preëminence which was not contested by his contemporaries, and as arbiter he both won and merited the approbation of the nations in dispute.

Of the many international congresses in which he participated the two Hague Peace Conferences and the London Naval Conference of 1908-1909 may be mentioned. In the first of these M. Renault was reporter of the Second Commission, which adapted the principles of the Geneva Convention to maritime warfare, and he was also reporter as well as member of the most important committee of the conference, appointed to draft the Final Act of its labors.

In the second of the Hague Peace Conferences M. Léon Bourgeois appropriately referred to him as exercising "a sort of magistracy"; and it may be said — indeed, it is not too much to say — without disrespect to any of his colleagues, that that august body consisted of two groups of members: M. Renault and the other delegates. He was both chairman and reporter of the committee to draft the Final Act, and he made its oral report to the Conference; he was reporter for the convention relating to the opening of hostilities, for the revised convention adapting the principles of the Geneva Convention to maritime warfare, for the convention creating an international prize court, and for the convention on the rights and duties of neutral Powers in naval war. He ably seconded M. Léon Bourgeois, first delegate of France at both the Hague Conferences, to whom is justly due the credit for the peaceful settlement convention of the first and the success of the second, in so far as it succeeded, in the matter of arbitration and peaceful settlement.

But, in addition to his duties as a plenipotentiary of France, he was in a very real sense the friend and adviser of the delegates at large, working in harmony with the German delegation, on the one hand, and the British delegation, on the other, and placing himself unreservedly, in and out of the conference, at the disposal of the American delegates. One instance among many may be cited. A Belgian delegate was anxious to present a project guaranteeing in a very large measure the immunity of private property, foreseeing that the plan presented by the United States could not hope to triumph. M. Renault entered the conference chamber while the Belgian delegate was at work on a

more modest proposal, with the result that M. Renault sat down beside him, took pen and paper in hand, and, after saying that he did not approve of the principle, drafted the project presented by the Belgian delegation in accordance with the views and desires of his colleague.

In the London Naval Conference, M. Renault, in addition to being a representative of France, was chairman of the committee of the whole and of the committee of examination, and reporter general. He prepared the masterly report upon the Declaration of London, which unfortunately has gone down like many a ship it was drafted to preserve.

In international arbitrations—to mention only those of The Hague under the provisions of the peaceful settlement convention—he was arbiter in the Japanese House Tax case of 1905, between Japan, on the one hand, and Germany, France, and Great Britain, on the other; the Casa Blanca case of 1909 between Germany and France; the Savarkar case of 1911 between France and Great Britain; president of the tribunal in the Canevaro case of 1912 between Italy and Peru; arbiter in the Carthage case of 1913 between France and Italy, and in the Manouba case of 1915 between the same countries.

M. Renault's career as professor and international lawyer was so distinguished that, in comparison, his career as a writer may seem to be overshadowed; but it should not, and, indeed, it can not, be overlooked, as it would alone have sufficed to hold his name in grateful remembrance in two domains of the law. In conjunction with M. Lyon-Caen, a fellow student, a fellow professor in the Faculty of Law as well as in the School of Political Sciences, and the friend of a lifetime, he published a Compendium of Commercial Law, in two volumes, an elaborate treatise on commercial law in eight volumes (which reached a fourth edition two years ago), and a manual of commercial law, the twelfth edition of which appeared in 1916.

In the field of international law, as such, he has many an article and monograph devoted to special phases of the subject, some large collections of treaties and documents, and more than one book to his credit. His admirable introduction to the Study of International Law, published in 1879, and which has been translated into Japanese, he modestly called "the work of a beginner," and toward the end of his career, in a little work of almost the same size entitled *The First Violations of International Law by Germany*, dealing with the invasion of Luxemburg and Belgium by that Power in violation of the treaties

to which it was at the time a party, he brought to bear the principles of law, of justice, and of fidelity to the pledged word which he had professed and applied during a lifetime.

Among the texts which he edited, or with whose publication he was associated, but one need be mentioned, which, like all of his work is a model of its kind. It is a small volume and bears the simple title: The Two Peace Conferences. Collection of Texts Adopted by the Conferences of 1899 and 1907. Supplementary Documents of 1909.

In appearance M. Renault was tall and well formed, with finely molded features, beaming with benevolence and good will, outwardly suggesting the simple curate whose precepts he inwardly and devoutly followed. So modest and unassuming, so unconscious of his greatness, and so unaware of the services which he had rendered in behalf of justice, upon which peace between nations can only be based, he was astounded when the Nobel Committee honored itself by awarding him a peace prize in 1907.

He was, indeed, although he knew it not, "the very oracle of international law."

JAMES BROWN SCOTT.

THE SEVERANCE OF DIPLOMATIC RELATIONS BETWEEN PERU
AND GERMANY

*Communicated by Dr. Juan Bautista de Lavalle, of the Peruvian Society
of International Law*

The Peruvian steamer *Lorton* was sunk by a German submarine, which captured it after having hoisted the French flag. This vessel had started from Caleta-Buena for Bilbao but was wrecked at a distance of four miles from the harbor of Suances upon the Spanish coast. After the completion of the act the Peruvian Legation at Berlin received instructions to inform the Imperial Government that the attack upon this neutral vessel, within neutral waters, with a cargo destined for a non-belligerent country, and outside the zone forbidden to navigation, constituted an unjustifiable attack against international law against which Peru protested, demanding at the same time in a peremptory manner that the German Government should repair the damage occasioned, pay indemnities, and condemn the act by punishing its authors.

Several months passed by, and the Imperial Government made the necessary investigations to enable it to make answer to the Peruvian note; finally, it decided to do so; it mentioned that the *Lorton* had been stopped and sunk for having had on board contraband of war, in conformity with Article 48 of the Declaration of London, and that the case would be settled by a prize court before which the parties interested might appear to justify their rights.

The Peruvian Government decided that such a decision was unacceptable and forwarded instructions to our minister at Berlin to transmit to the German Government a note in which our government maintained that in accord with the Declaration of London referred to by the Imperial note, the torpedoing of the *Lorton* was absolutely unjustified by reason of the nationality of the vessel, the nature and destination of the cargo, the place of the wrecking, the impossibility on the part of the vessel of knowing anything about the decree concerning the forbidden zones, which the Peruvian Government refused, moreover, to accept, and the principles governing maritime hostilities and protecting neutral vessels; for all these reasons Peru did not nor could she agree that the matter be taken before a prize court, and insisted in a decisive manner that the reparation and indemnification asked for should be complied with.

Subsequently, Germany declared herself ready to submit the matter to an arbitration in order to clear up the following point, to wit: whether the vessel had been sunk in Spanish waters, an insinuation which was repelled by our Minister for Foreign Affairs, who stated that the point was of no importance in view of the fact that, whether within or without these waters, the incontestable fact remained that the *Lorton* had been sunk within the twenty-mile maritime zone declared free by the decree of February 1st, and that the attack had been committed against a neutral vessel which was navigating in an absolutely licit commercial purpose and protected by the provisions of international law then in force.

As the efforts of our government remained ineffectual and our government could not secure from the Empire acceptance of the claim presented, Peru resolved to demand satisfaction within the space of one week from the German Government. The latter stated to the Peruvian representative at Berlin that it regarded the solution of the affair in peremptory terms as absolutely impossible. In possession of this answer, our Minister for Foreign Affairs, Mr. F. Tudela y Varela,

requested a meeting of Congress in order to inform it of the resolution of the government to break diplomatic relations with Germany; this decision was approved by 105 votes against 6. Immediately thereafter the Ministry ordered our minister at Berlin to ask for his passports and handed to Mr. Perl, German Minister to Peru, his passports.

The attitude of the Peruvian Government and Congress has met with the most enthusiastic approval on the part of public opinion and the press, which were in full accord with the sentiments and sympathies of the leaders of the Peruvian people. From the juridical and diplomatic point of view the act of Peru was fully justified.

Before the break on September 5th, the Minister for Foreign Affairs, while ratifying the declarations contained in the last message read to Congress by the President of the Republic, Mr. Joseph Pardo, and confirming the ideas set forth in the course of the discussion anent external politics, declared that the international policy of the government had for its object Pan-American solidarity founded upon the principles of international justice as proclaimed by President Wilson. The Chamber of Deputies agreed, therefore, to the declaration of the Minister for Foreign Affairs. On September 8th the Senate of the Republic unanimously adopted the following declaration: the international policy of Peru must be inspired by the principle of the solidarity of the nations of the continent with the United States, in harmony with the idea of international justice proclaimed by President Wilson and the declarations formulated in the Chamber of Deputies on the 5th of the current month by the Minister for Foreign Affairs.

In communicating to the different nations our break with Germany, the Minister stated in his important note on October 8th:

Peru, on her part, while endeavoring to realize the preponderance of a uniform continental policy, maintains with complete firmness the integrity of her national sovereign rights in the presence of the refutation made by Germany of the principles of naval warfare, and it is in defense of these same principles that Peru has been brought to break her relations with the Empire because of the act committed on the Spanish coast by the German submarine against the *Lorton* while this vessel was sailing between neutral ports, and exercising an authorized commerce in no way contrary to the German regulations with regard to forbidden zones which in themselves constitute a violation of the law of nations; an unjustifiable act for which the Peruvian Government was powerless to obtain the reparations which were due to it.

The resistance made by Germany against our just demand, in spite of the invocation of the general principles of international law, in spite of the consideration of this case from the point of view of these same arbitrary rules proclaimed by the German Government, the establishment of anterior facts for which a similar claim was favorably allowed,—these are acts which brought home to Peru the want of justice with which German policy is carried on and led her to take just action to counteract this policy in order that there might prevail in the world a juridical standard which might forever establish the predominance of right in the relations between nations.

THE AMENDMENT OF THE NATURALIZATION AND CITIZENSHIP ACTS WITH
RESPECT TO MILITARY SERVICE

It was foreseen by the framers of the Constitution, to whom we owe this more perfect Union, and indeed to whom we owe a more perfect union of States than has ever existed, that the government created by the States as their agent for general purposes should be invested with sovereign powers to handle matters of more interest to all States than to any one State; that matters of interest to the individual State should be determined by the sovereign powers of that State; and that the rules or regulations prescribed by the United States in the common interest should be uniform, whereas the rules and regulations prescribed by the individual States might infinitely vary, according to local conditions and circumstances. Among these general interests was that of naturalization, and to remove the subject from doubt it was provided in the eighth section of Article I of the Constitution that the Congress should have, among other grants of power, that "to establish an uniform rule of naturalization." In pursuance of this grant the Congress has from time to time passed naturalization laws, the most elaborate one of which is that approved by the President June 29, 1906, entitled "An Act to establish a Bureau of Immigration and Naturalization and to provide a uniform rule for the naturalization of aliens throughout the United States." The right of subjects or citizens to emigrate and to expatriate themselves is a logical consequence of the Declaration of Independence, which derives the powers of government from the consent of the governed.

While recognizing the right of expatriation in formal terms by Act of Congress of July 27, 1868, as "a natural and inherent right of all

people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness," it was not until the passage of the Act of March 2, 1907, that the government recognized the right of American citizens to expatriate themselves in accordance with the theory which this government had invariably applied to foreigners wishing to become citizens of the United States. This Act provides that a citizen of the United States loses his citizenship by becoming a citizen or subject of a foreign country, and that he also loses his citizenship by taking an oath of allegiance to a foreign country, whether in so doing he does or does not acquire the nationality of the country to which he takes the oath.

The naturalization and the citizenship Acts, adequate enough for the piping times of peace, have proven defective in time of war, or rather the exigencies of the war have required provisions springing out of the newer and unforeseen conditions. Therefore an Act amendatory of both was passed by the Congress, and approved by the President May 9, 1918. The fundamental purpose of this Act is to enable non-citizens, whether born in American territory, such as the Philippines or Porto Rico, or aliens in the ordinary sense of the word, to become citizens of the United States with or without a declaration of intention, if they are serving the country in the crisis through which it is passing, either in the land or naval forces of the United States; and further to enable citizens of the United States who had before our declaration of war against the Imperial German Government expatriated themselves by taking the oath of service and serving in the armies of the countries now at war with the enemies of the United States, to resume citizenship upon terms which would seem not to penalize them for what must today be considered a patriotic, as it was then a praiseworthy act.

While the Act in question is too long to print in its entirety, and difficult to analyze in that its provisions are stated in summary terms, it is nevertheless desirable to quote in this connection the first part of the first seven subdivisions added to the Naturalization Act of June 29, 1906, which reads as follows:

Any native born Filipino of the age of twenty-one years and upward who has declared his intention to become a citizen of the United States and who has enlisted or may hereafter enlist in the United States Navy or Marine Corps or the Naval Auxiliary Service, and who, after service of not less than three years, may be honorably discharged therefrom, or who may receive an ordinary discharge with recom-

mendation for reenlistment; or any alien, or any Porto Rican not a citizen of the United States, of the age of twenty-one years and upward, who has enlisted or entered or may hereafter enlist in or enter the armies of the United States, either the Regular or the Volunteer Forces, or the National Army, the National Guard or Naval Militia of any State, Territory, or the District of Columbia, or the State militia in Federal service, or in the United States Navy or Marine Corps, or in the United States Coast Guard, or who has served for three years on board of any vessel of the United States Government, or for three years on board of merchant or fishing vessels of the United States of more than twenty tons burden, and while still in the service on a reenlistment or reappointment, or within six months after an honorable discharge or separation therefrom, or while on furlough to the Army Reserve or Regular Army Reserve after honorable service, may, on presentation of the required declaration of intention petition for naturalization without proof of the required five years' residence within the United States if upon examination by the representative of the Bureau of Naturalization, in accordance with the requirements of this subdivision it is shown that such residence can not be established.

It will be observed that these classes of persons have already declared their intention to become citizens, and because of service to the government their naturalization is facilitated by removing from them the burden of proving a residence of five years within the United States.

The next part of this section deals with the cases of aliens who have not declared their intention to become citizens, as well as with certain classes of declarants who are considered entitled to citizenship because of the services which they have rendered the government. The first portion of this part of the section is thus worded:

Any alien serving in the military or naval service of the United States during the time this country is engaged in the present war may file his petition for naturalization without making the preliminary declaration of intention and without proof of the required five years' residence within the United States; any alien declarant who has served in the United States Army or Navy, or the Philippine Constabulary, and has been honorably discharged therefrom, and has been accepted for service in either the military or naval service of the United States on the condition that he becomes a citizen of the United States, may file his petition for naturalization upon proof of continuous residence within the United States for the three years immediately preceding his petition, by two witnesses, citizens of the United States, and in these cases only residence in the Philippine Islands and the Panama Canal Zone by aliens may be considered residence within the United States, and the place of such military service shall be construed as the place of residence required to be established for purposes of naturalization; and any alien, or any person owing permanent allegiance to the United States embraced within this subdivision, may file his petition for naturalization in the most convenient court without proof of residence within its jurisdiction, notwithstanding the limitation upon the jurisdiction of the courts specified in section three of the Act of June twenty-ninth, nineteen hundred and six,

provided he appears with his two witnesses before the appropriate representative of the Bureau of Naturalization and passes the preliminary examination hereby required before filing his petition for naturalization in the office of the clerk of the court, and in each case the record of this examination shall be offered in evidence by the representative of the government from the Bureau of Naturalization and made a part of the record at the original and any subsequent hearings; and, except as otherwise herein provided, the honorable discharge certificate of such alien, or person owing permanent allegiance to the United States, or the certificate of service showing good conduct, signed by a duly authorized officer, or by the masters of said vessels, shall be deemed *prima facie* evidence to satisfy all of the requirements of residence within the United States and within the State, Territory, or the District of Columbia, and good moral character required by law, when supported by the affidavits of two witnesses, citizens of the United States, identifying the applicant as the person named in the certificate or honorable discharge, and in those cases only where the alien is actually in the military or naval service of the United States, the certificate of arrival shall not be filed with the petition for naturalization in the manner prescribed; and any petition for naturalization filed under the provisions of this subdivision may be heard immediately, notwithstanding the law prohibits the hearing of a petition for naturalization during thirty days preceding any election in the jurisdiction of the court.

It will be noted in this connection that in addition to the repeal of the requirement of the declaration of intention, the requirement of residence is either modified or omitted, and the period of time required by the former Act eliminated.

But it may happen that an alien meeting the other requirements of the amending Act is not in a position to present himself in person before the clerk of the court, and to take the oath of allegiance in open court, according to the provisions of the original Act. Therefore, the last portion of this section provides that:

Any alien, who, at the time of the passage of this Act, is in the military service of the United States, who may not be within the jurisdiction of any court authorized to naturalize aliens, may file his petition for naturalization without appearing in person in the office of the clerk of the court and shall not be required to take the prescribed oath of allegiance in open court. The petition shall be verified by the affidavits of at least two credible witnesses who are citizens of the United States, and who shall prove in their affidavits the portion of the residence that they have personally known the applicant to have resided within the United States. The time of military service may be established by the affidavits of at least two other citizens of the United States, which, together with the oath of allegiance, may be taken in accordance with the terms of section seventeen hundred and fifty of the Revised Statutes of the United States after notice from and under regulations of the Bureau of Naturalization.

The eighth section added to the Act deals with seamen, providing briefly that such an alien, after the declaration of intention and three years' service upon a merchant or fishing vessel of the United States, shall be deemed a citizen of the United States for the purpose of serving on board any such merchant or fishing vessel of the United States, and that he shall "for all purposes of protection as an American citizen, be deemed such after the filing of his declaration to become such citizen."

The ninth of the new sections is very interesting and important, showing that candidates for citizenship are to be trained in the duties, as well as in the rights thereof, and text-books provided for them.

The tenth of the new sections is an attempt to regularize the status of persons qualified for citizenship on July 1, 1914, who, without a declaration of intention, erroneously exercised the rights, privileges, and duties of citizenship, by permitting them to be naturalized without making the preliminary declaration of intention upon satisfactory proof thereof.

The eleventh of the additional sections is very interesting, instructive, showing the faith of this country in the right even of an alien enemy to determine his nationality. The first part of this section dealing with this question is thus worded:

No alien who is a native, citizen, subject, or denizen of any country, State, or sovereignty with which the United States is at war shall be admitted to become a citizen of the United States unless he made his declaration of intention not less than two nor more than seven years prior to the existence of the state of war, or was at that time entitled to become a citizen of the United States, without making a declaration of intention, or unless his petition for naturalization shall then be pending and is otherwise entitled to admission, notwithstanding he shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject.

It is recognized that the proceedings in such a case should be carefully supervised, and that every reasonable precaution should be taken in order to prevent an abuse of what can not be regarded as other than a very great and exceptional provision. Therefore, the hearing is to be had only after a notice of ninety days, given by the clerk of the court in which it is to take place, to the commissioner or deputy commissioner of naturalization, to be present, and the final hearing to be held in open court can take place only "after such notice to the representative of the Government from the Bureau of Naturalization, whose objection shall cause the petition to be continued from time to time for so long as the Government may require." The experimental

nature of this proceeding is recognized and sought to be safeguarded by allowing "the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien." Recognizing that there might be aliens not included within the previous enumeration who are loyal and deserving of citizenship, the President is authorized by the last proviso of this section to exempt an alien enemy from the category of alien enemy upon an investigation and report by the Department of Justice fully establishing his loyalty.

The twelfth of the new sections deals with a situation appealing very strongly to our sense of justice by prescribing an appropriate method to enable those of our fellow countrymen who took service against our enemy before our country itself felt justified in going to war with the Imperial German Government, to resume citizenship.

The second section of an Act in reference to the expatriation of citizens and their protection abroad, approved March 2, 1907, provided that "Any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign State in conformity with its laws, or when he has taken an oath of allegiance to any foreign State."

The purpose of this section was twofold. First, to allow our citizens to obtain foreign nationality, and to recognize the new status thus created; second, to recognize a loss of American citizenship by those of our countrymen who should take an oath of allegiance to a foreign state without acquiring the nationality of or citizenship in that country. According to either of these provisions, American citizens who had taken service in the armies of Great Britain and France would seem to have renounced their American citizenship. To enable them to regain what they had sacrificed, an Act was passed and approved on October 5, 1917, defining their status. This Act apparently was considered defective, in that it required the person desiring to repatriate himself to have been discharged from foreign service, and required of him evidence and formalities with which he might find it difficult to comply. Therefore this Act was repealed, and in lieu thereof the following substituted which constitutes the twelfth of the new sections:

That any person who, while a citizen of the United States and during the existing war in Europe, entered the military or naval service of any country at war with a country with which the United States is now at war, who shall be deemed to have lost his citizenship by reason of any oath or obligation taken by him for the purpose of entering such service, may resume his citizenship by taking the oath

of allegiance to the United States prescribed by the naturalization law and regulations, and such oath may be taken before any court of the United States or of any State authorized by law to naturalize aliens or before any consul of the United States, and certified copies thereof shall be sent by such court or consul to the Department of State and the Bureau of Naturalization, and the Act (Public fifty-five, Sixty-fifth Congress, approved October fifth, nineteen hundred and seventeen) is hereby repealed.

Very properly, a person serving in the military or naval forces of the United States at the end of the war, or honorably discharged therefrom during its continuance, on account of disability incurred in the line of duty, is by the thirteenth of the new sections "relieved from the necessity of proving that immediately preceding the date of his application he has resided continuously within the United States the time required by law of other aliens."

Finally, a third section of this Act clears up the doubt which might have existed as to the validity for military purposes of a declaration of intention filed before the Naturalization Act of 1906 went into effect, by providing that

All certificates of naturalization granted by courts of competent jurisdiction prior to December thirty-first, nineteen hundred and eighteen, upon petitions for naturalization filed prior to January thirty-first, nineteen hundred and eighteen, upon declarations of intention filed prior to September twenty-seventh, nineteen hundred and six, are hereby declared to be valid in so far as the declaration of intention is concerned, but shall not be by this Act further validated or legalized.

Such are the most important provisions of this Act.

JAMES BROWN SCOTT.

SUITS BETWEEN STATES

The Supreme Court of the United States, as if to call attention to its fitness to decide controversies between States by the application of principles of justice, has already handed down in this year of war two decisions; the first on March 4, 1918, in a boundary dispute between the States of Arkansas and Tennessee, the second on April 22, 1918, in the long drawn out controversy between the States of Virginia and West Virginia as to the obligation of the latter State to pay a proportional part of the debt contracted by Virginia before West Virginia was separated from it. In addition the Supreme Court, on June 10, 1918, entered a decree in the controversy between Arkansas and Tennessee, appointing a commission, with the approval and upon request

of counsel for the States, to draw and mark the boundary and to report its proceedings to the court for its confirmation or such further action as may be deemed necessary in the premises. The court also heard argument, upon its own suggestion, of counsel for the United States in the controversy between the States of Wyoming and Colorado in a matter of irrigation, in order that the rights of the States should be considered with due regard to the rights of the United States as trustee of the States forming the American Union. The decision of this case, expected before the adjournment of the court on June 10, 1918, has apparently gone over because of its importance, but will probably be delivered in the October term of the present year.

From this brief statement it will be seen that, in the course of a year which has not yet sped, the Supreme Court of these United States has had before it not merely a dispute involving sovereignty over a particular region claimed by two of these States; a controversy involving an obligation of a State to assume and to pay a proportional part of expenses incurred in its behalf before separation from that State and to pay a judgment fixing that obligation in the sum of twelve million dollars, with interest, but also a controversy between two States of the Union and the United States, as the representative of the Union, each litigant appearing by its counsel in due course to have a question involving the rights of sovereign communities and of sovereign States determined by that due process of law and the application of principles of justice obtaining between individuals.

The determination of a boundary between States of the American Union has become such a matter of course, that the only feature in it attracting attention may be said to be the suggestion of the court, made in the trial of *Cissna v. Tennessee* (242 U. S. 195, 198), that the two States should file their bill in equity in the Supreme Court to determine the boundary between them, upon which the decision in the case then before them depended. So familiar has the process of judicial settlement become in the course of the century, that the judges of the Supreme Court are no longer appalled by the appearance of States at their bar, but, in the course of argument, suggest, as it were offhand, that the Supreme Court is open to the august litigants should they desire to avail themselves of the jurisdiction with which it was wisely invested by the framers of the Constitution in order to prevent a resort to arms upon the breakdown of negotiations between political communities.

On March 7, 1876, the Mississippi River made for itself, suddenly and without forewarning, a new channel, appropriately called the "Centennial Channel," and the question at issue between the litigating States was whether the land between the old and the new channel, which had belonged to Tennessee, became the property of Arkansas, inasmuch as the Mississippi River was the boundary between the two States. This question was not a new one in the Supreme Court, and for present purposes the holding of the court is sufficiently stated in the following portion of the headnote prefixed to the case:

When two States of the Union are separated by a navigable stream, their boundary being described as "a line drawn along the middle of the river," or as "the middle of the main channel of the river," the boundary must be fixed (by the rule of the "thalweg") at the middle of the main navigable channel, so that each State may enjoy an equal right of navigation. *Iowa v. Illinois*, 147 U. S. 1.

Following this principle, the court holds that the true boundary line between the States of Arkansas and Tennessee is the middle of the main channel of navigation of the Mississippi, as it existed at the Treaty of Peace concluded between the United States and Great Britain in 1783, subject to such changes as have occurred since that time through natural and gradual processes. . . .

Where running streams are the boundaries between States, the same rule applies as between private proprietors, namely, that when the bed and channel are changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream; while if the stream from any cause, natural or artificial, suddenly leaves its old bed and forms a new one, by the process known as an avulsion, the resulting change of channel works no change of boundary, which remains in the middle of the old channel, although no water may be flowing in it, and irrespective of subsequent changes in the new channel.

This rule applies to a navigable stream between States; the boundary is not changed by an avulsion but remains as it was before, the center line of the old main channel of navigation. . . .

After an avulsion, so long as the old channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant the effect of these processes is at an end; the boundary then becomes fixed at the middle of the channel, as above defined, and the gradual filling up of the bed that ensues is not to be treated as an accretion to the shores but as an ultimate effect of the avulsion. . . .

The court will appoint a commission to run, locate and designate the boundary line between the two States at the place in question, in accordance with the principles herein stated. The nature and extent of the erosions and accretions that occurred in the old channel prior to the avulsion here involved, and the question whether it is practicable now to locate accurately the line of the river as it then ran, will be referred to said commission, subject to a review of its decision by this court if need be.

It is to be observed that the court specifically accepts, and rightly, the principles of law determining the rights of private litigants and applies them to controversies between the States; and some day nations may perhaps learn to their great benefit and, be it said, to the benefit of humanity at large, that rights and duties depend upon the act itself and not upon the parties in controversy seeking either to gain a benefit or to avoid a detriment by the act in question. Fortunately for the States of the American Union this doctrine is a mere commonplace, and would not deserve mention, even in passing, were it not for the fact that it appears to be either unknown or to be considered as extraordinary in other parts of the world. Because of this fact, Justice Baldwin's statement of it, in the leading case of *Rhode Island v. Massachusetts* (12 Peters 657, 733-735), decided in 1838, may be quoted:

Title, jurisdiction, sovereignty, are, therefore, dependent questions, necessarily settled, when boundary is ascertained, which, being the line of territory, is the line of power over it; so that great as questions of jurisdiction and sovereignty may be, they depend in this case on two simple facts. 1. Where is the southernmost point of Charles river? 2. Where is the point, three English miles in a south line, drawn from it? When these points are ascertained, which, by the terms, are those called for in both charters, then an east and west line from the second point is necessarily the boundary between the two states, if the charters govern it.

If this court can, in a case of original jurisdiction, where both parties appear, and the plaintiff rests his case on these facts, proceed to ascertain them; there must be an end of this cause, when they are ascertained, if the issue between them is upon original right by the charter boundaries. We think, it does not require reason or precedent, to show that we may ascertain facts, with or without a jury, at our discretion, as the circuit courts, and all others do, in the ordinary course of equity; our power to examine the evidence in the cause, and thereby ascertain a fact, can not depend on its effects, however important in their consequences. Whether the sovereignty of the United States, of a state, or the property of an individual, depends on the locality of a tree, a stone, or water-course; whether the right depends on a charter, treaty, cession, compact, or a common deed; the right is to territory, great or small in extent, and power over it, either of government or private property; the title of a state is sovereignty, full and absolute dominion (2 Pet. 300-1); the title of an individual, such as the state makes it by its grant and law.

No court acts differently in deciding on boundary between states, than on lines between separate tracts of land; if there is uncertainty where the line is, if there is a confusion of boundaries by the nature of interlocking grants, the obliteration of marks, the intermixing of possession under different proprietors, the effects of accident, fraud, or time, or other kindred causes, it is a case appropriate to equity. An issue at law is directed, a commission of boundary awarded; or, if the courts are satisfied, without either, they decree what and where the boundary of a farm, a manor, province, or a state, is and shall be. When no other matter affects a

boundary, a decree settles it as having been by original right, at the place decreed; in the same manner, as has been stated, where it is settled by treaty or compact; all dependent rights are settled when boundary is. 1 Ves. sen. 448-50. If, heretofore, there was an issue in this case, on the locality of the point three miles south of the southernmost point of Charles river, we should be competent to decide it; and decree where the boundary between the states was, in 1629 and 1663, at the dates of their respective charters.

On these principles, it becomes unnecessary to decide on the remaining prayers of the bill; if we grant the first, and settle boundary, the others follow; and if the plaintiff obtains relief as to that, he wants no other. The established forms of such decrees extend to everything in manner or way necessary to the final establishment of the boundary, as the true line of right and power between the parties.

The second case is one with which the lawyer interested in controversies between States is familiar, and one with which the Supreme Court itself doubtless wishes it were less familiar, for, in one or other of its phases, the case has been before that august tribunal no less than nine times, including the present suit, and the end is not yet. Mr. Chief Justice White delivered the brief opinion of the court on its eighth appearance, and, in delivering the unanimous opinion of his brethren on the present occasion, he thus summarizes the original cause of action, the proceedings had, and the present status of the controversy:

A rule allowed at the instance of Virginia against West Virginia to show cause why in default of payment of the judgment of this court in favor of the former State against the latter, an order should not be entered directing the levy of a tax by the legislature of West Virginia to pay such judgment, and a motion by West Virginia to dismiss the rule is the matter before us.

In the suit in which the judgment was rendered Virginia, invoking the original jurisdiction of this court, sought the enforcement of a contract by which it was averred West Virginia was bound. The judgment which resulted was for \$12,393,-929.50 with interest and it was based upon three propositions specifically found to be established: First, that when territory was carved out of the dominion of the State of Virginia for the purpose of constituting the area of the State of West Virginia, the new State, coincident with its existence, became bound for and assumed to pay its just proportion of the previous public debt of Virginia. Second, that this obligation of West Virginia was the subject of a contract between the two States made with the consent of Congress and was incorporated into the Constitution by which West Virginia was admitted by Congress into the Union and therefore became a condition of such admission and a part of the very governmental fiber of that State. Third, that the sum of the judgment rendered constituted the equitable proportion of this debt due by West Virginia in accordance with the obligations of the contract.

The suit was commenced in 1906 and the judgment rendered in 1915. The various opinions expressed during the progress of the cause will be found in the re-

ported cases cited in the margin, in the opinion in one of which (234 U. S. 117), a chronological statement of the incidents of the controversy was made.

The opinions referred to will make it clear that both States were afforded the amplest opportunity to be heard and that all the propositions of law and fact urged were given the most solicitous consideration. Indeed it is also true that in the course of the controversy, as demonstrated by the opinions cited, controlled by great consideration for the character of the parties, no technical rules were permitted to frustrate the right of both of the States to urge the very merits of every subject deemed by them to be material.

But, notwithstanding the opportunity given to present its claims and to have their merits determined, West Virginia is either not satisfied with the judgment of the court, or is unwilling, as defeated litigants, whether private or public, usually are unwilling, to pay the judgment rendered against it. The merits of the case do not concern us any more than they now concern the court. The question at issue is the enforcement of the judgment in behalf of the State of Virginia against the State of West Virginia, a question in which Virginia is interested to the extent of twelve million dollars and more, in which West Virginia is interested in a like sum, in addition to its *amour propre*, in which the court is interested, as execution of a judgment is supposed to inhere in judicial power, and in which the publicist, both at home and abroad, is interested, in that heretofore, whether or not execution by force, if need be, is essential to judicial power, force has not yet been used to compel compliance by a State of the American Union with a judgment rendered against it. In the case of a judgment had in 1860 by Kentucky against Dennison (24 Howard 66, 109-110), then Governor of Ohio, held because thereof to be a judgment against the State of Ohio, Mr. Chief Justice Taney, speaking for a unanimous court, said: "But if the Governor of Ohio refuses to discharge this duty, there is no power delegated to the General Government, either through the Judicial Department or any other Department, to use any coercive means to compel him."

It is not the purpose of the present comment to discuss the means by which execution is to be enforced, as the court has now held it can be, a question which is to be argued by learned counsel for the two States in the February term of the Supreme Court and to be decided by that tribunal, unless in the meantime the judgment should be executed to the satisfaction of the State of Virginia. The importance of the question is the reason for its statement in this form, and not the least

purpose of this comment is to invite the reader's attention in advance to the judgment of the court, to be pronounced after argument at its next term.

The learned Chief Justice, considering it elementary that "judicial power essentially involves the right to enforce the results of its exertion," asks and addresses himself in the course of a closely reasoned opinion,

"1. May a judgment rendered against a State as a State be enforced against it as such, including the right to the extent necessary for so doing of exerting authority over the governmental powers and agencies possessed by the State?" and "2. What are the appropriate remedies for such enforcement?" Under the second head he considers "(a) The power of Congress to legislate for the enforcement of the obligation of West Virginia," and "(b) The appropriate remedies under existing legislation."

It is to be expected that the views of Virginia and West Virginia differ on these subjects, otherwise the bill would not have been filed in the first instance, and the difference as to the nature and effect of a judgment exists between them, otherwise the question of its enforcement would not be before the court. The views of each of the litigants are thus expressed by the Chief Justice:

On this subject Virginia contends that as the Constitution subjected the State of West Virginia to judicial authority at the suit of the State of Virginia, the judgment which was rendered in such a suit binds and operates upon the State of West Virginia, that is, upon that State in a governmental capacity, including all instrumentalities and agencies of state power, and indirectly binding the whole body of the citizenship of that State and the property which by the exertion of powers possessed by the State are subject to be reached for the purpose of meeting and discharging the state obligation. As then, the contention proceeds, the legislature of West Virginia possesses the power to tax and that body and its powers are all operated upon by the judgment, the inability to enforce by means of ordinary process of execution gives the right and sanctions the exertion of the authority to enforce the judgment by compelling the legislature to exercise its power of taxation. The significance of the contention and its scope are aptly illustrated by the reference in argument to the many decided cases holding that where a municipality is empowered to levy specified taxation to pay a particular debt, the judicial power may enforce the levy of the tax to meet a judgment rendered in consequence of a default in paying the indebtedness.

On the other hand West Virginia insists that the defendant as a State may not as to its powers of government reserved to it by the Constitution be controlled or limited by process for the purpose of enforcing the payment of the judgment. Because the right for that end is recognized to obtain an execution against a State and levy it upon its property, if any, not used for governmental purposes, it is argued,

affords no ground for upholding the power by compelled exercise of the taxing authority of the State to create a fund which may be used when collected for paying the judgment. The rights reserved to the States by the Constitution, it is further insisted, may not be interfered with by the judicial power merely because that power has been given authority to adjudicate at the instance of one State a right asserted against another, since although the authority to enforce the adjudication may not be denied, execution to give effect to that authority is restrained by the provisions of the Constitution which recognize state governmental power.

The court is apparently of the decided opinion that the consent to suit contained in Article II, Section 2, of the Constitution carries with it the duty to comply with the consequences of suit, and that a State, because of subjection to suit, is subjected to the enforcement of judgment against it had in a judicial proceeding to which the judicial power extends.

Under the second heading the Chief Justice examines the remedies appropriate to the case, which should not be summarized lest, in so doing, it lose its point and effect,¹ and thus concludes his own opinion and the unanimous opinion of the court:

Giving effect to this view, accepting the things which are irrevocably foreclosed — briefly stated, the judgment against the State operating upon it in all its governmental powers and the duty to enforce it viewed in that aspect, — our conclusion is that the case should be restored to the docket for further argument at the next term after the February recess. Such argument will embrace the three questions left open: 1. The right under the conditions previously stated to award the mandamus prayed for; 2. If not, the power and duty to direct the levy of a tax as stated; 3. If means for doing so be found to exist the right, if necessary, to apply such other and appropriate equitable remedy by dealing with the funds or taxable property of West Virginia or the rights of that State as may secure an execution of the judgment. In saying this, however, to the end that if on such future hearing provided for the conclusion should be that any of the processes stated are susceptible of being lawfully applied (repeating that we do not now decide such questions) occasion for a further delay may not exist, we reserve the right, if deemed advisable, at a day hereafter before the end of the term or at the next term before the period fixed for the hearing, to appoint a master for the purpose of examining and reporting concerning the amount and method of taxation essential to be put into effect, whether by way of order to the state legislature or direct action, to secure the full execution of the judgment, as well as concerning the means otherwise existing in the State of West Virginia, if any, which by the exercise of the equitable powers in the discharge of the duty to enforce payment may be available for that purpose.

It will be observed that the court does not decide that any one of the methods mentioned in this paragraph is appropriate, but contents

¹ For the text of this portion of the opinion, see *post*, pp. 669-671.

itself with a statement that the judgment is binding upon West Virginia, and that West Virginia should be forced in some appropriate way to comply with its application. And in so doing the court no doubt acted wisely, because, on a former occasion, Andrew Jackson, then President of the United States and not averse to the use of physical force, is reported to have said in reference to the decision of the Supreme Court against the State of Georgia in the case of *Worcester v. Georgia* (6 Peters 515), decided in 1832, "John Marshall has made his decision; now let him enforce it."

From another point of view, the opinion of the Chief Justice is as interesting as it is important, in that he shows that the action of the King in Privy Council, deciding controversies between colonies by judicial procedure, was the precedent both for the Articles of Confederation, investing the Congress of the United States with that power, and for investing the Supreme Court of these United States with the power and the duty, wherever the judicial power is properly invoked, to decide controversies between the States of the American Union.

JAMES BROWN SCOTT.

CHRONICLE OF INTERNATIONAL EVENTS

Abbreviations: *Ann. sc. pol.*, Annales des sciences politiques, Paris; *Arch. dipl.*, Archives Diplomatiques, Paris; *B.*, boletín, bulletin, bolletino; *P. A. U.*, bulletin of the Pan American Union, Washington; *Cd.*, Great Britain, Parliamentary Papers; *Clunet*, J. de Dr. Int. Privé, Paris; *Current History* — Current History — A Monthly Magazine of the New York Times; *Doc. dipl.*, France, Documents diplomatiques; *B. Rel. Ext.*, Boletín de Relaciones Exteriores; *Dr.*, droit, diritto, derecho; *D. O.*, Diario Oficial; *For. rel.*, Foreign Relations of the United States; *Ga.*, gazette, gaceta, gazzetta; *Int.*, international, internacional, internazionale; *J.*, journal; *J. O.*, Journal Officiel, Paris; *L.*, Law; *M.*, Magazine; *Mém. dipl.*, Mémorial diplomatique, Paris; *Monit.*, Belgium, Moniteur belge; *Martens*, Nouveau recueil général de traités, Leipzig; *Official Bulletin*, Official Bulletin of the United States; *Q.*, Quarterly; *Q. dip.*, Questions diplomatiques et coloniales; *R.*, review, revista revue, rivista; *R. pol. et parl.* Revue Politique et Parlementaire; *Reichs G.*, Reichs-Gesetzblatt, Berlin; *Staats.*, Staatsblad, Netherlands; *State Papers*, British and Foreign State Papers, London; *Stat. at L.*, United States Statutes at Large; *Times*, The Times (London).

November, 1917.

- 14 PANAMA — ECUADOR. Exchange of ratifications of the treaty of January 28, 1917, for the exchange of parcel post packages, without declared value. Text: *B. Rel. Ext.* (Ecuador) 9:1589.
- 15 ECUADOR — ITALY. Exchange of ratifications of treaty of arbitration signed February 25, 1911: Text: *B. Rel. Ext.* (Ecuador) 9:1594.

December, 1917.

- 31 BRAZIL — URUGUAY. House of Deputies of the Brazilian Congress approved the arbitration treaty between Brazil and Uruguay concluded *ad referendum* by the diplomatic representatives of the two nations. *P. A. U.*, 46:250.

January, 1918.

- 28-30 Cuban Society of International Law. Second annual meeting of the Society held in Havana. *P. A. U.*, 46:258.

February, 1918.

- 1 JAPAN. Americans visiting Japan are required to have their passports viséd by a Japanese consular or diplomatic official

- before leaving the United States. *Official Bulletin*, March 1, 1918.
- 16 BELGIUM — GERMANY. A joint protest was addressed to Chancellor von Hertling by the deputies and senators present in occupied Belgium. Text: *Official Bulletin*, March 27, 1918.
- 21 Interallied Labor Conference held in London. It accepted war aims program of British Labor announced Dec. 21, 1917. *Current History*, 8 (pt.): 32.
- 27 SCANDINAVIA. Scandinavian conferences for exchange of goods held at Christiania. Summary of agreements: *Official Bulletin*, May 4, 1918.
- 28 ARGENTINE REPUBLIC — UNITED STATES. Exchange of notes on the one hundredth anniversary of the beginning of diplomatic relations between the two countries. Texts: *Official Bulletin*, April 26, 1918.

March, 1918.

- 1 ALSACE — LORRAINE. Protest of February 17, 1871, read in all schools and churches in France. *London Times*, March 1, 1918.
- 3 GERMANY — RUSSIA. Revised text of treaty. *London Times*, March 5-6, 1918. *Current History*, 8 (pt. 1): 54.
- 7 SPAIN — UNITED STATES. Ratifications exchanged of agreement under which supplies may be sent to Pershing's forces. Summary of text: *Official Bulletin*, March 9-18.
- 7 FINLAND — GERMANY. Announced that a trade and shipping agreement had been concluded at the same time as the peace treaty. Text: *Current History*, 8 (pt. 1): 445.
- 9 (22) RUSSIA — ROUMANIA. Treaty concluded regarding the occupation of Bessarabia by Russian troops, etc., and establishing international commissions at Odessa, Kieff, Moscow, Petrograd, Jassy and Galatz for the settlement of disputes, the missions to be composed of Russian, Roumanian, British, French and American representatives. Text: *London Times*, April 2, 1918.
- 9-18 PERSIA. Announcement of personnel of new cabinet. *Official Bulletin*, March 9, 1918.
- 11 RUSSIA — FINLAND. Treaty announced as having been concluded providing for evacuation of Finland, etc. *London Times*, March 12, 1918.
- 11 RUSSIA — UNITED STATES. President sent message to Soviet Congress at Moscow. Text: *Official Bulletin*, March 12, 1918.

- 12 NETHERLANDS — UNITED STATES. Report of Netherland Government to Parliament of negotiations with the United States and Allies for a trade and shipping agreement. Declaration of Netherlands and reply of the United States. Texts: *Official Bulletin*, March 16, 30, 1918.
- 17 CENTRAL AMERICAN COURT ceased to exist under the terms of the treaty creating it. *London Times*, March 17, 1918.
- 21 GERMANY — ROUMANIA. Germany increased her demands on Roumania, calling for surrender of all munitions. Austria demanded surrender of all territory west of a line extending from a point east of Red Tower to a point on the Danube near Ghilramar, and also a strip of country eighty miles long and ten miles wide in the region of Predeal. On March 23 armistice was further extended by Germany, owing to the delay in forming cabinet. On March 29 Germany demanded that the Roumanian oil-wells be turned over to a German-controlled corporation. *Current History*, 8 (pt. 1): 234.
- 21-29 RUSSIA. The Transcaucasian Constituent Assembly, in session at Tiflis, refused to ratify peace treaty with Germany, and urged immediate war. On March 29 the Diet approved the basis of a separate peace agreement with Turkey, including autonomy for Armenia and the restoration of old frontiers. *Current History*, 8 (pt. 1): 233.
- 22 BELGIUM — GERMANY. Agreement reached for the exchange of civil prisoners. *Current History*, 8 (pt. 2): 97.
- 22 MEXICO. Decree promulgated concerning the exportation of gold and silver, modifying the decree of September 27, 1917. *Official Bulletin*, March 30, 1918.
- 22 DENMARK — GERMANY. Third quarterly agreement commercial concluded. *London Times*, March 23, 1918.
- 26 CHINA. Announced that Tuan Chi-Jui had been made premier. *Official Bulletin*, March 27, 1918.
- 26 ROUMANIA — CENTRAL POWERS. Peace treaty initialed. *London Times*, March 27, 1918.
- 29 FINLAND — GERMANY. Finland protested against the arrest of Major Henry Crosby Emery, representative of the Guaranty Trust Company, and his detention on the Aland Islands. *Current History*, 8 (pt. 1): 234.
- 30 NETHERLANDS — UNITED STATES. Declaration of the Netherland

Government as to seizure of Dutch ships by the United States, with reply of the United States. *Official Bulletin*, April 13, 1918.

- 31 SERBIA. Serbia's war aims proclaimed by Premier Pashitch in declaration to the Skupshtna in meeting at Corfu. *Official Bulletin*, May 14, 1918.

April, 1918.

- 2 GERMANY — RUSSIA. Ultimatum to the Soviet Government demanding cessation of sending troops to Finland. *London Times*, April 2, 1918.
- 2-26 FRANCE — GERMANY. Conference of delegates met at Berne and reached agreement for the exchange of prisoners. The total number of prisoners affected reaches 300,000. Summary: *Current History*, 8 (pt. 2): 95.
- 2 RUSSIA — GERMANY — TURKEY. German and Turkish Ambassadors present their credentials to the Russian Federal Soviet Republic. Text: *Official Bulletin*, May 4, 1918.
- 3 FINLAND — GERMANY. German troops landed in Finland. *London Times*, April 4 1918.
- 3 FINLAND. British and French troops reported March 31 to be coöperating with the Bolshevist troops in the defense of the Kola and Mourmanisk against the Finnish White Guards. German troops landed in Finland April 3; Russian fleet escaped from Helsingfors on April 7. On April 8 Germany sent ultimatum demanding removal or disarmament of all Russian warships in Finnish waters by April 12, and on April 11 a German squadron with several transports arrived at Lovisa. Helsingfors was occupied by the Germans on April 15. *Current History*, 8 (pt. 1): 234; *New York Times*, April 4, 1918.
- 3 UNITED STATES — GREAT BRITAIN. Agreement relative to extension to Australia, Papua and Norfolk Island, of the copyright of literary and artistic property. *Official Bulletin*, April 13, 1918.
- 5 GERMANY — RUSSIA. Russia protested against the invasion of Kursk province by German and Ukrainian troops. *Current History*, 8 (pt. 1): 234.
- 5 JAPAN — RUSSIA. Japanese and British marines landed at Vladivostok following the killing of a Japanese and the wounding of

- two others by Russian armed soldiers. The Siberian Council of Soldiers' and Workmen's Delegates protested to the consular corps, but the Japanese representative at Vologda explained that the landing was only a local incident and that Admiral Kato had acted on his own initiative. *Current History*, 8 (pt. 1): 233.
- 8-10 CONGRESS OF OPPRESSED RACES OF AUSTRIA-HUNGARY HELD IN ROME. On May 31 the Secretary of State announced that the proceedings of the Congress had been followed with great interest by the Government of the United States, and that the nationalistic aspirations of the Czecho-Slovaks and Jugo-Slavs for freedom have the earnest sympathy of the United States Government. Text of resolutions adopted: *Official Bulletin*, May 31, 1918. The Italian Government presented the national standard to the Czech-Slovak battalion now mobilized under the Italian General Graziani. *Official Bulletin*, May 28, 1918.
- 9 BESSARABIA. The National Assembly of Bessarabia voted by 86 against 3 for union with Roumania, from which it was separated in 1812. The Roumanian Premier was then at Kishenev and took cognizance of the vote, declaring the union to be definitive and indissoluble. On April 12 the Bessarabian delegates went to Jassy to present homage to the King and Queen of Roumania. *Current History*, 8 (pt. 1): 535.
- 11 FRANCE—AUSTRIA. French Government issued a statement relative to the letter written by the Emperor Charles of Austria to Prince Sixtus of Bourbon, brother of the Empress Zita of Austria, instructing him to convey to the President of France the assurance that Austria would support France's just claims, the reestablishment of Serbia and Belgium, etc. Text of letter: *London Times*, April 13-18.
- 11 GERMANY—SPAIN. As a result of the commercial agreement between Spain and the United States, German submarines began a blockade of Spanish ports. *Current History*, 8 (pt. 1): 231.
- 11 GERMANY—URUGUAY. Because a German submarine captured an Uruguayan military commission bound for France, the Uruguayan Government asked Germany whether Germany considered a state of war to exist with Uruguay. *Current History*, 8 (pt. 1): 230. On May 16 Germany replied that the German Government did not consider a state of war to exist. *Current History*, 8 (pt. 1): 429.

- 13 ARMENIA AND GEORGIA. Refused to recognize the cession of territory under the Brest-Litovsk Treaty, and fighting broke out in Batum, Kars and Ardahan, as the Turks began military occupation. *Current History*, 8 (pt. 1): 233.
- 15 AUSTRIA. Count Czernin, Minister for Foreign Affairs, resigned. *London Times*, April 16, 1918.
- 18 RUSSIA — UNITED STATES. Statement issued by the American Ambassador to Russia to the effect that the landing of Japanese and British marines at Vladivostok was a mere police precaution and had no political significance. It was further denied that any American marines had been landed. *Official Bulletin*, April 18, 1918.
- 18 RUSSIA — GERMANY. The Russian Soviet Government protested against cruelties inflicted by German troops on civilians in invaded territory. Texts of protest with German reply: *Official Bulletin*, April 25, 1918.
- 20 JAPAN — RUSSIA. Japan ordered reinforcements sent to Vladivostok, as the Bolshevist Government had ordered all munitions westward. On same day diplomatic representatives of the Allied Powers were formally informed by the Siberian Provincial Duma of the formation, by the representatives of the Zemstvos and other public organizations, of the Government of Autonomous Siberia. The Bolshevist Government requested the recall of French, English, and American consuls at Vladivostok and the investigation of negotiations said to have been conducted between their Peking Embassies and the Siberian Autonomous Government. Japan was also asked to explain participation of officials in counter-revolutionary movement. Official demand for the removal of American consul received May 6, from Ambassador Francis. The Department refused to remove Mr. Caldwell, not deeming that he had done anything wrong. Reported that Japanese Vice-Consul and president of Japanese Association at Irkutsk arrested May 6. *Current History*, 8 (pt. 1): 428.
- 22 GUATEMALA. Guatemalan Assembly declared that country to be in the same position as the United States in the war, and on April 27 the Guatemalan Minister at Washington announced that the declaration was meant as a declaration of war against Germany and her allies. *Current History*, 8 (pt. 1): 429.
- 23 JAPAN. Viscount Motono, Minister for Foreign Affairs, succeeded

- by Baron Goto, Minister of the Interior. *London Times*, April 25, 1918.
- 23 GERMANY — RUSSIA — FINLAND. Germany protested to the Bolsheviks that the landing of allied troops at Murmansk was a violation of the Brest-Litovsk Treaty. Germany also denied that German troops participated in the attack on Kem. *Current History*, 8 (pt. 1): 429.
- 24 HOLLAND — GERMANY. Announced that Germany had sent an ultimatum to Holland demanding the right of transit for civilian supplies, sand and gravel. Holland yielded to these demands on April 28, with the stipulation that the sand and gravel should not be used for war purposes. On May 5 Foreign Minister Loudon announced that Germany had promised to transport no troops and to limit the amount of sand and gravel. *Current History*, 8 (pt. 1): 430.
- 25 GERMANY — SWITZERLAND. Announced that Germany will not sink ships flying Swiss flag. *London Times*, April 27, 1918.
- 26 ITALY — GERMANY. Announced that an agreement had been reached for the exchange of prisoners of war. *Current History*, 8 (pt. 2): 94.
- 26 TRANSCAUCASIA. Proclaimed its independence, and a conservative government was formed, headed by M. Chkemkeli. *Current History*, 8 (pt. 1): 429.
- 26 TURKEY — BULGARIA. Dispatch from Vienna says that Bulgaria has agreed to cede to Turkey the Karagatch railway station at Adrianople and the left bank of the river Maritza as far as Kuleli-Burgas as compensation for Bulgaria's acquisition of the Dobrudja. *London Times*, April 29, 1918.
- 26 FINLAND. The White Guards demanded surrender of fort, part of the Kronstadt defenses, on Finnish coast ceded to Russia by the Finnish Bolshevik Government. The Kronstadt Council of Workmen's and Soldiers' Delegates refused to comply with the demand and organized resistance. Viborg was taken on April 29, and the Finnish flag was raised over fortress of Sveaborg on May 13. On May 15 the White Guards entered Helsingfors and on May 17 seized Boris-Gleb, on the Norwegian border, from the Russian troops, thus gaining access to the Arctic Ocean. *Current History*, 8 (pt. 1): 429.
- 27 BELGIUM — UNITED STATES. A new credit of \$3,250,000 was extended to Belgium. *Official Bulletin*, April 27, 1918.

- 27 GREECE — UNITED STATES. The United States assured Greece that her rights will be secured in the peace negotiations. Statement issued in Athens by the American Minister to Greece. Text: *Official Bulletin*, April 27, 1918.
- 28 HONDURAS — GUATEMALA. Commission to settle boundary under the treaty of August 1, 1914, met at the Pan American Union, Washington. The Guatemalan Commission is composed of Senor Toledo Herrarte, Guatemalan Minister for Foreign Affairs; Marcial Prem, Manuel Echevarria, Claudio Urrutia, Gen. Felipe Pereira, and Senor Aguilar, secretary. The Honduran Mission is composed of Dr. Policarpo Bonilla, Envoy Extraordinary and Minister Plenipotentiary on special mission, Rafael H. Valle, Secretary, Dr. Carlos Pinel, attaché, and Medardo Zuniga, engineer. The firm of Root, Buckner, Clark and Holland are counsel for Honduras, and the Honorable Chandler P. Anderson, counsel for Guatemala. *Official Bulletin*, April 29, 1918.
- 28 PORTUGAL. Dr. Sidonio Paes, leader of the revolution in December, elected president. *New York Times*, April 29, 1918.
- 29 UKRAINE. At meeting of several thousand persons, a resolution was passed calling for overthrow of government, closing of Central Rada, cancellation of Constituent Assembly convoked for May 12, and the abandonment of land socialization. General Skoropauski was proclaimed hetman and was recognized by Germany. The German advance into the Ukraine was continued and military rule established at Kiev. Members of the government and the Minister of War were removed. Statement made in Reichstag May 4 by Vice Chancellor von Payer to effect that government was plotting assassination of German officials and that grain was withheld. *Current History*, 8 (pt. 1): 428-9.
- 30 NORWAY — UNITED STATES. Agreement signed relative to American exports to Norway. Text: *Official Bulletin*, May 27, 1918.
- 30 UNITED STATES. Maximum sentences of two years' imprisonment in a federal penitentiary and fines of \$10,000 each were imposed today upon Franz Bopp, former German consul-general, and E. H. von Schack, former vice consul, following their conviction on charges of conspiring to foment revolution against British rule in India. *New York Times*, May 31, 1918.

- 30 JAPAN — UNITED STATES. Viscount Kikujiro Ishik presented his letters of credence as Japanese Ambassador, to the President. Text of remarks of Ambassador and the President: *Official Bulletin*, May 1, 1918.
- 30 RUSSIA — GERMANY. The Department of State announced that it has been learned that a German commission consisting of 115 members will shortly leave for Russia to take up the question of the exchange of Russian and German prisoners. It is reported that it is the intention of the commission to present an ultimatum requiring the immediate release of German prisoners in good health; those who are ill will remain in Russia under the care of neutral physicians; in return Germany will release only Russians who are ill or incapacitated. In event of refusal, Germany will take Petrograd. *Official Bulletin*, April 30, 1918.

May, 1918.

NETHERLANDS — GREAT BRITAIN. British Government replied to the protest of the Dutch Government against the seizure of Dutch ships, asserting the full legality of the seizure. *Current History*, 8 (pt. 1): 430.

- 1 GAVRIO PRINZIP, the assassin of the Austro-Hungarian Archduke Francis Ferdinand, died of disease in an Austrian fortress. *New York Times*, May 2, 1918.
- 2 GERMANY. Prize law amended so that neutral vessels are considered to have been put into operation in the interest of the warfare of Germany's enemies when the state whose flag the vessels are entitled to fly has made a tonnage contract with a country, enemy to Germany, or when the principal part of the merchant marine of a neutral state makes voyages for countries at war with Germany. *New York Times*, May 30, 1918.
- 3 PERSIA. Persia informed Holland that it regarded as null and void all treaties imposed upon Persia in recent years, and especially the Russo-British treaty of 1907 regarding spheres of influence. *Current History*, 8 (pt. 1): 430.
- 3 UNITED STATES — NORWAY. Commercial agreement signed providing for the exchange of necessary commodities and for the restriction of Norwegian exports to the enemy. *Official Bulletin*, May 4, 1918.

UNITED STATES — CANADA. Agreement to restrict coal shipment

- from the United States to Canada. *Official Bulletin*, May 4, 1918.
- 5 GERMANY — HOLLAND. Agreement signed relative to commercial intercourse. May 6, 1918. *London Times*, May 6, 1918.
 - 5 GREAT BRITAIN — ESTONIA. A. J. Balfour announced in Commons that Great Britain was prepared to grant temporary recognition to the Estonian National Council. *Current History*, 8 (pt. 1): 429.
 - 5 GERMANY. Professor E. C. Emery, the American who was seized when the Germans landed in the Aland Islands, was freed from prison but detained in Germany. *Current History*, 8 (pt. 1): 429.
 - 6 CHILE. Edouard Suarez Mujica named Chilean ambassador to the United States. *New York Times*, May 6, 1918.
 - 6 ROUMANIA — GERMANY. Peace treaty signed, and supplemental legal, economic and political treaties were later completed. Summary of texts of political treaty, *New York Times*, May 12, 1918; *London Times*, May 9, 13, 1918; *Current History*, 8 (pt. 1): 531; *Current History*, 8 (pt. 2): 127.
 - 8 GERMANY — NICARAGUA. Nicaragua declared war on Germany. *New York Times*, May 8, 1918.
 - 9 LUXEMBURG. Announcement made by the U. S. Post Office Department that money-orders cannot be remitted to Luxembourg which is under the German postal administration. *Official Bulletin*, May 13, 1918.
 - 10 ROUMANIA. Roumanian parliament dissolved by royal decree and new elections ordered. *Current History*, 8 (pt. 1): 429.
 - 10 GERMANY — AUSTRIA. Text of treaty of close military alliance for twenty-five years. *New York Times*, May 31, 1918.
 - 10 AUSTRIA — HUNGARY. New Hungarian cabinet formed by Dr. Wekerle. On May 13 Vienna papers published declaration by the Czech members of the Austrian House of Lords in which an independent state was demanded. *Current History*, 8 (pt. 1): 430.
 - 10 CAUCASUS — TURKEY. The Caucasus proposed peace negotiations with Turkey. *Current History*, 8 (pt. 1): 429.
 - 10 RUSSIA — GERMANY. Germany sent ultimatum to Russia relative to exchange of prisoners, cessation of arming of troops, and disbandment of troops recently formed for the occupation of Moscow and other cities. *New York Times*, May 11, 1918.
 - 11 GERMANY — RUSSIA. Russia protested to Germany against the

continuation of hostilities. Text: *New York Times*, May 13, 1918.

- 12 POLAND. *Lausanne Gazette* announced that Poland was handed over to Germany economically, politically, and militarily according to a secret treaty arranged at Brest-Litovsk between a Russian delegation headed by Trotsky and German representatives. At a conference between the Emperors of Austria and Germany, the latter agreed to a solution of the Polish question desired by Austria, in return for certain concessions from Austria. *Current History*, 8 (pt. 1): 429.
- 12 RUSSIA — GERMANY. M. Tchitcherin sent wireless message to Ambassador Joffe at Berlin instructing him to try to obtain cessation of all hostilities and declaring that captures of Russian territory violated terms of treaty of peace. He gave assurance that Black Sea Fleet would not attack port of Novorossysk which the Germans threatened to capture. Germans agreed to cessation of naval hostilities if Black Sea Fleet returned to Sebastopol. *Current History*, 8 (pt. 1): 429.
- 14 GERMANY — LITHUANIA. Germany recognized the independence of Lithuania, allied with the German Empire. In the proclamation the German Emperor stated that it was assumed that Lithuania would participate in the war burdens of Germany. *Current History*, 8 (pt. 1): 429.
- 14 CISCAUCASIA. Proclaimed its independence. Ciscaucasia is the upper part of the Government of the Caucasus, lying north of the Caucasus Mountains and between the Caspian Sea on the east and the Black Sea and the Sea of Azoff on the west, and comprising the provinces of Stavropol, Kuban, and Terek. Daghestan, which also lies on the northern slope of the Caucasus, is included in Transcaucasia. *Current History*, 8 (pt. 1): 429.
- 14 GERMANY — RUSSIA. Swedish report told of German ultimatum to Russia demanding occupation of Moscow and other Russian cities, abolishment of armaments, and the effect of financial arrangements which would practically make Russia a German colony. *Current History*, 8 (pt. 1): 429.
- 15 FINLAND — GREAT BRITAIN. Finland replied to the communication from Great Britain in regard to the conditions upon which Finnish independence would be recognized, that though such recognition would be of great value, Finland was unwilling to

- submit the question of her independence to any congress. *London Times*, May 17, 1918.
- 16 JAPAN — CHINA. Sino-Japanese military pact signed. Summary: *New York Times*, May 23, 1918; text: *Current History* 8 (pt. 2): 498, 501.
- 17 SERBIA. A new credit of \$3,000,000 extended by the United States. *Official Bulletin*, May 17, 1918.
- 18 ITALY — ENGLAND — FRANCE — RUSSIA. New treaty signed abrogating the treaty under which Italy entered the war in 1915. *New York Times*, May 19 (21), 1918; Summary: *London Times* (Weekly ed.), May 31 1918.
- 19 FRANCE — SWITZERLAND. France protested to Switzerland against the recent commercial agreement with Germany, involving exchange of Swiss cattle for German coal, iron and steel, and threatened to withhold French shipments of coal. *Review of Reviews*, 57: 582.
- 21 SWITZERLAND — ALLIES. Swiss Cabinet approved economic agreement recently concluded with the Entente Powers. By this agreement Switzerland undertakes to deliver certain specified quantities of timber to the Allied Governments for a period of eight months, in exchange for important concessions in regard to supply of foodstuffs. *London Times*, May 22, 1918.
- 22 SWITZERLAND — GERMANY. Commercial convention signed. Summary: *London Times*, May 24, 1918.
- 22 NETHERLANDS — UNITED STATES. Supplementary note delivered to the Department of State contending that Secretary Lansing's reply to the original protest against the seizure by the United States of Dutch merchant ships in American ports did not fully answer the objections. *Current History*, 8 (pt. 2): 49.
- 23 UKRAINE — RUSSIA. Peace conference convened at Kieff. *London Times*, May 27, 1918.
- 23 TRANS-BAIKAL — RUSSIA. General Semenov established an autonomous government in the Trans-Baikal region. The Bolshevik Foreign Minister, Tchicherin, sent a protest to China on May 26th charging the Chinese Government with officially protecting General Semenov in his activities against the Soviet Government. *Current History*, 8 (pt. 2): 52.
- 23 JAPAN — CHINA. Naval convention signed. *Current History*, 8 (pt. 2): 53.

- 23 CUBA — MEXICO. Mexico severed diplomatic relations with Cuba. *New York Times*, May 24, 1918.
- 24 FRANCE — UNITED STATES. Proclamation extending to French musical composers copyright protection. *Official Bulletin*, May 29, 1918.
- 24 CHINA — RUSSIA — JAPAN. China protested to Russia against the transfer to Japan of a section of the Chinese Eastern Railway near the Sungari River. *New York Times*, May 29, 1918.
- 25 COSTA RICA — GERMANY. Costa Rica declared war on Germany. Four of the six Central American Republics are now at war with Germany: Panama, Guatemala, Nicaragua, and Costa Rica. *London Times*, May 27, 1918.
- 28 REPUBLIC OF THE DON. A delegation of the Republic of the Don presented a note to the Ukrainian Government in which, after stating the fact that this Republic had been constituted a federal state and now comprises the territory of the Cossacks of the Don, Kuban, and Astrakhan, as well as of the Northern Caucasus and the Black Sea coast, together with that of the Free People of the Steppes of Southeastern Russia and the Provinces of Stavropol and the Black Sea and part of the Province of Saratoff, it is requested that it be borne in mind that this new state is not part of Russia, but an independent Union of the above-mentioned peoples; that it is at war with the existing Government of Russia, which it refuses to acknowledge, and that it will defend its independence with all the means at its disposal. *London Times*, May 31, 1918.
- 28 ROUMANIA. Lord Robert Cecil announced in the British House of Commons that the Allied Governments had informed the Roumanian Government that they considered the Roumanian peace treaty null and void. *London Times*, May 29, 1918.
- 29 SWEDEN — THE ENTENTE ALLIES. Commercial and navigation agreement signed. *New York Times*, May 31, 1918.

June, 1918.

- 2 JAPAN — CHINA. Formal compact signed which was agreed to May 16-20. *Current History*, 8 (pt. 2): 53.
- 3 BELGIUM. M. Charles de Brocquevill, Foreign Minister, succeeded by M. Cooreman. *Current History*, 8 (pt. 2): 53.
- 3 PANAMA. Death of Ramon Valdez, president of Panama. First

vice-president Cino Urriola became acting President. New York *Times*, June 4, 1918.

- 3 FINLAND — GERMANY. Summary of text of treaty to establish a monarchy in Finland. New York *Evening Post*, June 3, 1918.
- 3 GREAT BRITAIN — UNITED STATES. Agreement signed renewing arbitration treaty for five years. Approved by the Senate June 24, 1918. Text: *Congressional Record*, 56: 8878.
- 4 SUPREME WAR COUNCIL OF THE ALLIED POWERS. In the statement issued by the Council, a free Poland and Yugoslavia was approved. Text of statement: *Current History*, 8 (pt. 2): 126.
- 4 UNITED STATES — GREAT BRITAIN. Treaty signed relative to reciprocal conscription of citizens. Approved by the Senate June 24, 1918. Text with correspondence, *Congressional Record*, 56: 8878-8880.
- 4 WHITE RUSSIAN REPUBLIC. The Ukraine Government recognized the White Russian Republic. This includes Lithuania, and is north of Ukraine, bounded on the north and east by Russia and by Poland and the Baltic provinces on the west. New York *Evening Post*, June 4, 1918.
- 7 GERMANY — AUSTRIA — BULGARIA — TURKEY. Announced that Bulgaria and Turkey had become parties to the Austro-German pact. Summary: London *Times*, June 10, 1918.
- 9 GERMANY — GREAT BRITAIN. Conference on Prisoners of War opened at The Hague under the presidency of Dr. Fredenburgh of the Netherland Government. List of delegates: London *Times*, June 10, 1918.
- 10 UNITED STATES — RUSSIA. Senator William H. King introduced a resolution in the United States Senate proposing that a civilian commission be sent to Russia, backed by an allied military force, for the purpose of overcoming German propaganda and to aid in giving freedom to the country. *Current History*, 8 (pt. 2): 52.
- 10 RUSSIA — GERMANY — FINLAND. Announced that Germany and Russia had reached an agreement concerning the boundaries of Finland, providing that Finland cede to Russia the fortresses of Ino and Raivola under guarantees that they were not to be fortified. Russia ceded to Finland the western part of the Murman Peninsula with an outlet to the Arctic Ocean. *Current History*, 8 (pt. 2): 53.

- 11 RUSSIA — UNITED STATES. The Russian Ambassador at Washington presented to the Department of State a resolution adopted by the Central Committee of the Cadet Party of Russia urging allied intervention. *Current History*, 8 (pt. 2): 52.
- 12 FINLAND. Finnish Government proposed to the Landtag the establishment of a monarchy with a hereditary ruler. *Current History*, 8 (pt. 2): 53.
- 13 RUSSIA — UKRAINE. Peace treaty signed. London *Times*, June 15, 1918.
- 13 REPUBLIC OF THE DON — KUBAN COSSACK GOVERNMENTS. Treaty signed. London *Times*, June 15, 1918.
- 14 BELGIUM. Belgian Government presented a memorandum to the Department of State showing that Belgians were still being deported. *Current History*, 8 (pt. 2): 53.
- 15 PERU — GERMANY. German interned ships seized in Peru. New York *Times*, June 16, 1918.
- 17 FINLAND. Announced that Finland would annex Karelia. Karelia is in the northwest corner of Russia and embraces the southeast corner of Finland, and parts of the modern government of St. Petersburg, Olonets and Archangel and borders on the North Sea. The Karelians belong to Finnish stock. *Current History*, 8 (pt. 2): 53.
- 15 SWEDEN — GREAT BRITAIN. Swedish Council ratified commercial agreement. London *Times*, June 17, 18, 1918.
- 27 SCANDINAVIA. Sixth Scandinavian Ministerial Conférence since the beginning of the war begun at Amalienborg Palace, Copenhagen. The Premiers, Foreign Ministers, and other officials of Denmark, Norway, and Sweden attended. Washington *Evening Star*, July 1, 1918.
- 28 ROUMANIA — CENTRAL POWERS. Reported that the Roumanian Chamber of Deputies ratified the peace treaty with Central Powers. Washington *Evening Star*, July 2, 1918.

KATHRYN SELLERS.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL
LAW

GREAT BRITAIN¹

Aliens Restriction Order, 1916, with additions, omissions, and substitutions to March 4, 1918. *Home Office.* 4d.

Belgium, Kingdom of. Ministry of Justice and Ministry of Foreign Affairs. Reply to the German White Book of May 10, 1915 (*Die völkerrechtswidrige Führung des belgischen Volkskriegs*). 5s. 6d.

British and Foreign State Papers. Vol. 107. 1914. (Part I.) *Foreign Office.* 10s. 7d.

China. Text of notes exchanged between the United States and Japanese Governments regarding their policy in China, and declaration of the Chinese Government on the subject. (Cd. 8895.) 1½d.

Claims preferred against His Majesty's Government for damages sustained by the Netherlands steamships *Elve* and *Bernisse* through the action of German submarines, Correspondence with the Netherlands Government respecting the. (Cd. 8909.) 2½d.

Commissions and committees set up to deal with questions which will arise at the close of the war, A list of. (Cd. 8916.) 5d.

Cyprus (Annexation) Amendment Order in Council, Nov. 27, 1917. (St. R. & O. 1917, 1374.) 1½d.

Death by burning of J. P. Genower, able seaman, when prisoner of war at Brandenburg Camp, Correspondence with the German Government respecting the. (Cd. 8987.) 1½d.

Enemy banks (London agencies). Second report of Sir William Plender, dated Dec. 13, 1917, covering the operations of these banks for the period Oct. 1, 1916, to Sept. 30, 1917. With appendices. (Cd. 8889.) 4d.

Imports into Scandinavia and Holland during 1916 and 1917, Statistics of. (Cd. 8989.) 1½d.

¹ Official publications of Great Britain may be purchased of Wyman & Sons, Fetter Lane, E. C., London, England.

Internment of seaplanes, etc., salvaged on the high seas and brought into Netherlands jurisdiction, Correspondence respecting the. (Cd. 8985.) 4d.

Merchant tonnage and the submarine. Statement issued by the War Cabinet at the request of the Board of Admiralty; showing, for the United Kingdom and for the world, for the period August, 1914, to December, 1917, (1) mercantile losses by enemy action and marine risk; (2) mercantile shipbuilding output; and (3) enemy vessels captured and brought into service. With diagrams showing mercantile losses and shipbuilding output for the United Kingdom and for the world, for the same period. (Cd. 9009.) $1\frac{1}{2}$ d.

Military service conventions with Allied States Act, 1917, Order in Council signifying that an agreement, dated Dec. 11, 1917, has been made with Italy. Jan. 16, 1918. (St. R. & O. 1918, 52.) $1\frac{1}{2}$ d.

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UNITED STATES ²

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———. Opinion of District Court, Eastern District of Michigan, southern division, relating to discharge from military service of non-declarant Austrian alien who failed to claim exemption and is held in

² When prices are given, the document in question may be obtained for the amount noted from the Superintendent of Documents, Government Printing Office, Washington, D. C.

military service after declaration of war with Austria. 17 pp. 1918. (War Statutes Bulletin 67.) *Justice Dept.*

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North German Lloyd Dock Company, and Hamburg-American Terminal and Navigation Company, Statement of A. Mitchell Palmer, Alien Property Custodian, at hearing before subcommittee on amendment to urgent deficiency appropriation bill to authorize President to take title and possession of docks, terminal equipment, and transportation facilities of, at New York City. 1918. 21 pp. *Appropriations Committee.*

Opium traffic. Report to accompany S. 4166 to add penalty of imprisonment as punishment for importation of opium into China by Americans. March 23, 1918. 1 p. (S. rp. 327.) *Foreign Relations Committee.*

Radiotelegraphy. Protocol between United States and Italy relative to; signed at Washington, March 27, 1918. 5 pp. (Treaty Series 631 A.) *State Dept.*

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GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

STATE OF ARKANSAS *v.* STATE OF TENNESSEE

Supreme Court of the United States

March 4, 1918

[246 U.S. 158]

This is an original suit in equity brought by the State of Arkansas against the State of Tennessee for the purpose of determining the location of the boundary line between those States along that portion of the bed of the Mississippi River that was left dry as the result of an avulsion which occurred March 7, 1876, when a new channel was formed known as the "Centennial Cut-off."

The cause, having been put at issue by the filing of answer and replication, was brought on to hearing upon stipulated facts, pursuant to an intimation made by this court in *Cissna v. Tennessee*, 242 U. S. 195, 198.

The facts are as follows: By the Treaty of 1763 between England, France, and Spain, Art. VII (3 Jenkinson's Treaties, 177, 182), the boundary line between the British and French possessions at this place was established as "a line drawn along the middle of the River Mississippi," with consequent recognition of the dominion of France over the territory now comprising the State of Arkansas, and the dominion of Great Britain over that now comprising the State of Tennessee. By the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat. 80, the territory comprising Tennessee passed to the United States, its westerly boundary being described (Art. II) as "a line to be drawn along the middle of the said River Mississippi." It formed a part of the State of North Carolina. In the year 1790 North Carolina ceded it to the United States (Act of April 2, 1790, c. 6, 1 Stat. 106). In a report made in the following year by Thomas Jefferson, then Secretary of State, and submitted to Congress by President Washington, the bounds of the ceded territory were described, the western boundary being "the middle of the river

Mississippi" (1 American State Papers, Public Lands, p. 17). And by Act of June 1, 1796, c. 47, 1 Stat. 491, the whole of the territory thus ceded was made a State. By the Louisiana Purchase, under the treaty of April 30, 1803, 8 Stat. 200, the territory comprising Arkansas was acquired by the United States from France. It was admitted into the Union as a State by Act of June 15, 1836, c. 100, 5 Stat. 50, its easterly boundary being described as "middle of the main channel of the said river."

According to the stipulated facts, the earliest evidence concerning the location of the river at the place in question relates to the year 1823, and is set forth upon a map made recently by Major Humphreys, purporting to show the conditions as they existed at that time. The river flowed southward past Dean's Island on the Arkansas side, made a bend to the westward at or about the southernmost part of this island, and then swept northerly and westerly around Island No. 37 (Tennessee), a lesser channel known as McKenzie Chute passing between that island and the main Tennessee shore; the main and lesser channels met at the southwestern extremity of Island No. 37, and the river flowed thence southwesterly past Point Able, Tennessee, opposite which it turned again easterly and then northerly, forming what is known as the Devil's Elbow, and flowed thence easterly or northeasterly around Brandywine Point or Island (Arkansas), until it came within a distance of about two miles from the place where it started its northerly turn opposite Dean's Island; and at this point it turned again to the southward. It is agreed that in 1823 the river ran substantially as indicated upon the Humphreys map and that between that year and the year 1876 the width of the channel, by erosion and caving in of the Tennessee bank south, southwest, and west of Dean's Island, along the mainland and Island No. 37, had increased from its former width of about a mile or less to a width of $1\frac{1}{4}$ or $1\frac{1}{2}$ miles, with consequent narrowing of the neck of land opposite Dean's Island. It is a matter in controversy between the parties whether during the same period there were accretions to Dean's Island and Plum Island, in the State of Arkansas, and to Island No. 37 and the shore below Point Able, on the Tennessee side. A steamboat reconnaissance of the river was made by Colonel Suter under the direction of the War Department in 1874, and a map of the place in question was prepared under his direction and is in evidence. There being no proof of material changes in the river between 1874 and 1876, this map, while not shown to be entirely accurate, is

agreed to represent the general situation as it existed in the latter year.

On March 7, 1876, the river suddenly and with great violence, within about thirty hours, made for itself a new channel directly across the neck opposite the apex of Dean's Island, so that the old channel around the bend of the elbow (a distance of fifteen to twenty miles) was abandoned by the current, and although it remained for a few years covered with dead water it was no longer navigable except in times of high water for small boats, and this continued only for a short time, since the old bed immediately began to fill with sand, sediment, and alluvial deposits. In the course of time it became dry land suitable for cultivation, and to a considerable extent covered with timber. The new channel is called, from the year in which it originated, the "Centennial Cut-off," and the land that it separated from the Tennessee mainland goes by the name of "Centennial Island."

The cut-off and the territory affected by it are the same that are mentioned and dealt with in the cases of *Stockley v. Cissna*, 119 Fed. Rep. 812; *State v. Muncie Pulp Co.*, 119 Tennessee, 47, and *Stockley v. Cissna*, 119 Tennessee, 135. The State of Tennessee, in her answer, pleads and relies upon the first and second of these cases as judicial determinations and evidence of the boundary line between the States at the place in question. Their materiality and effect are matters to be determined.

Prior to 1876, notably around Island 37 and "Devil's Elbow," the bank on one side of the river was high and subject to erosion, the effect of the water against it; while on the opposite side of the bank was a flat or sloping shore, so that the width of the river was materially affected by the rise and fall of the water, being considerably wider at normal than at low-water stage.

The following questions are submitted for the determination of this court:

(1) Arkansas contends that the true boundary line between the States (aside from the question of the avulsion of 1876) is the middle of the river at low water, that is, the middle of the channel of navigation; whereas Tennessee contends that the true boundary is a line equidistant from the well-defined banks at a normal stage of the river.

(2) Arkansas contends that by the avulsion of 1876 the boundary line between the States was unaffected, and remained in the middle of the river bed which was by the avulsion abandoned, whether the first

or the second definition of the middle of the river be adopted; whereas Tennessee contends that the line was affected by the avulsion to the extent indicated by the opinion of the Supreme Court of that State in *State v. Muncie Pulp Co.*, 119 Tennessee, 47; that is, that the effect of the avulsion was to press back the line between the two States to the middle of the old channel as it ran previous to the erosions upon the Tennessee banks that occurred between 1823 and 1876.

(3) Tennessee contends that, irrespective of the question of accretions and erosions, it is impossible now to locate accurately the line of the river as it ran in 1876 just prior to the avulsion; and that therefore the line of 1823 must prevail as the boundary line between the States, where it has been or can be located accurately and definitely; whereas Arkansas insists that there is no real difficulty in locating the middle of the river of 1876.

Upon the determination of these points, the court is to appoint a commission to run, locate, and designate the line. . . .

[Arguments of counsel omitted.]

Mr. Justice PITNEY, after stating the case as above, delivered the opinion of the court.

Concerning the proper location of an interstate boundary line with reference to the shores and channel of a navigable river separating one State of the Union from another, much has been written. The subject was brought under a consideration of this court in *Iowa v. Illinois*, 147 U. S. 1. In that case, Illinois contended that the boundary followed the middle of the channel of commerce, that is, the channel commonly used by steamboats and other craft navigating the river; while on the part of Iowa it was insisted that the line ran in the middle of the main body of the river, taking the middle line between its banks and shores, irrespective of where the channel of commerce might be, and that the measurements must be taken at ordinary stage of water. The contention of each State was supported by a decision of its court of last resort: *Dunlieth & Dubuque Bridge Co. v. County of Dubuque*, 55 Iowa, 558, 565; *Buttenth v. St. Louis Bridge Co.*, 123 Illinois, 535, 548. This court recognized these cases as presenting in the clearest terms the different views as to the line of jurisdiction between neighboring States separated by a navigable stream, and thereupon proceeded to analyze their reasoning and doctrine. From a review of the authorities upon international law, it was declared that when a

navigable river constituted the boundary between two independent States the interest of each State in the navigation, and the preservation by each of its equal right in such navigation, required that the middle of the channel should mark the boundary up to which each State on its side should exercise jurisdiction; that hence, in international law, and by the usage of European nations, the term "middle of the stream," as applied to a navigable river, meant the middle of the channel of such stream, and that in this sense the terms were used in the treaty between Great Britain, France, and Spain, concluded at Paris in 1763, so that by the language "a line drawn along the middle of the River Mississippi," as there used, the middle of the channel was indicated; that the *thalweg*, or middle of the navigable channel, is to be taken as the true boundary line between independent States for reasons growing out of the right of navigation, in the absence of a special convention between the States or long use equivalent thereto; and that although the reason and necessity of the rule may not be as cogent in this country, where neighboring States are under the same general government, yet the same rule must be held to obtain unless changed by statute or usage of so great a length of time as to have acquired the force of law; and that the Illinois Enabling Act of April 18, 1818, § 2, c. 67, 3 Stat. 428, which made "the middle of the Mississippi river" the western boundary of the State, the Missouri Enabling Act of March 6, 1820, § 2, c. 22, 3 Stat. 545, which adopted "the middle of the main channel of the Mississippi river" as the eastern boundary of that State, and the Wisconsin Enabling Act of August 6, 1846, c. 89, 9 Stat. 56, which referred to "the center of the main channel of that river," employed these varying phrases as signifying the same thing. Hence we reached the conclusion (p. 13) that as between the different views as to the line of jurisdiction between neighboring States, separated by a navigable stream, the controlling consideration "is that which preserves to each State equality in the right of navigation in the river." It was accordingly adjudged and declared that the boundary line between the contesting States was "the middle of the main navigable channel of the Mississippi River"; and a final decree to that effect was afterwards made, 202 U. S. 59.

The rule thus adopted, known as the rule of the *thalweg*, has been treated as set at rest by that decision. *Louisiana v. Mississippi*, 202 U. S. 1, 49; *Washington v. Oregon*, 211 U. S. 127, 134, 214 U. S. 205, 215.

The argument submitted in behalf of the defendant State in the case at bar, including a reference to the notable recent decision of its Supreme Court in *State v. Muncie Pulp Co.* (1907), 119 Tennessee, 47, has failed to convince us that this rule ought now, after the lapse of twenty-five years, to be departed from.

It is said that Arkansas has interpreted the line to be at a point equidistant from the well-defined and permanent banks of the river, that Tennessee has likewise recognized this boundary, and that by long acquiescence on the part of both States in this construction, and the exercise of jurisdiction by both in accordance therewith, the question should be treated as settled. The reference is to certain judicial decisions, and two acts of legislation. In *Cessill v. State* (1883), 40 Arkansas, 501, which was a prosecution for unlicensed sale of liquors upon a boat anchored off the Arkansas shore, it was held that the boundary line, as established by the original treaties and since observed in federal legislation, state constitutions, and judicial decisions was the "line along the river bed equidistant from the permanent and defined banks of the ascertained channel on either side." This was followed in subsequent decisions by the same court. *Wolfe v. State* (1912), 104 Arkansas, 140, 143; *Kinnanne v. State* (1913), 106 Arkansas, 286, 290. The first pertinent decision by the Supreme Court of Tennessee is *State v. Muncie Pulp Co.* (1907), 119 Tennessee, 47, in which a similar conclusion was reached, partly upon the ground that it had been adopted by the courts of Arkansas. The legislative action referred to consists of two acts of the General Assembly of the State of Tennessee (Acts 1903, p. 1215, c. 420; Acts 1907, c. 1723, c. 516), each of which authorized the appointment of a commission to confer and act with a like commission representing the State of Arkansas to locate the line between the States in the old and abandoned channel at the place that we now have under consideration; and the Act of 1907 further provided that if Arkansas should fail to appoint a commission, the Attorney General of Tennessee should be authorized to institute a suit against that State in this court to establish and locate the boundary line. These acts, far from treating the boundary as a line settled and acquiesced in, treat it as a matter requiring to be definitely settled, with the coöperation of representatives of the sister State if practicable, otherwise by appropriate litigation.

The Arkansas decisions had for their object the establishment of a proper rule for the administration of the criminal laws of the State,

and were entirely independent of any action taken or proposed by the authorities of the State of Tennessee. They had no particular reference to that part of the river bed that was abandoned as the result of the avulsion of 1876; on the contrary, they dealt with parts of the river where the water still flowed in its ancient channel. The decision of the Supreme Court of Tennessee in *State v. Muncie Pulp Co.*, 119 Tennessee, 47, sustained the claim of the State to a part of the abandoned river bed which, by the rule of the *thalweg*, would be without that State. The combined effect of these decisions and of the legislation referred to, all of which were subsequent to the year 1876, falls far short of that long acquiescence in the practical location of a common boundary, and possession in accordance therewith, which in some of the cases has been treated as an aid in setting the question at rest. *Rhode Island v. Massachusetts*, 4 How. 591, 638, 639; *Indiana v. Kentucky*, 136 U. S. 479, 510, 514, 518; *Virginia v. Tennessee*, 148 U. S. 503, 522; *Louisiana v. Mississippi*, 202 U. S. 1, 53; *Maryland v. West Virginia*, 217 U. S. 1, 41.

Therefore we find it unnecessary to decide whether the supposed agreement between the States respecting the boundary would be valid without the consent of Congress, in view of the third clause of §10 of Art. 1 of the Constitution of the United States.

The next and perhaps the most important question is as to the effect of the sudden and violent change in the channel of the river that occurred in the year 1876, and which both parties properly treat as a true and typical avulsion. It is settled beyond the possibility of dispute that where running streams are the boundaries between States, the same rule applies as between private proprietors, namely, that when the bed and channel are changed by the natural and gradual processes known as erosion and accretion, the boundary follows the varying course of the stream, while if the stream from any cause, natural or artificial, suddenly leaves its old bed and forms a new one, by the process known as an avulsion, the resulting change of channel works no change of boundary, which remains in the middle of the old channel, although no water may be flowing in it, and irrespective of subsequent changes in the new channel. *New Orleans v. United States*, 10 Pet. 662, 717; *Jefferis v. East Omaha Land Co.*, 134 U. S. 178, 189; *Nebraska v. Iowa*, 143 U. S. 359, 361, 367, 370; *Missouri v. Nebraska*, 196 U. S. 23, 34-36.

There is controversy with respect to the application to the foregoing

rule to the particular circumstances of this case. It is insisted in behalf of the State of Tennessee that since the rule of the *thalweg* derives its origin from the equal rights of the respective States in the navigation of the river, the reason for the rule and therefore the rule itself ceases when navigation has been rendered impossible by the abandonment of a portion of the river bed as the result of an avulsion. In support of this contention we are referred to some expressions of Vattel, Almeda, Moore, and other writers; but we deem them inconclusive, and are of the opinion, on the contrary, that the contention runs counter to the settled rule and is inconsistent with the declarations of this court, in *Nebraska v. Iowa*, 143 U. S. 359, 367, that "avulsion would establish a fixed boundary, to wit: the center of the abandoned channel," or, as it is expressed on page 370, "the boundary was not changed, and it remained as it was prior to the avulsion, the center line of the old channel," and in *Missouri v. Nebraska*, 196 U. S. 23, 36, that the boundary line "must be taken to be the middle of the channel of the river as it was prior to such avulsion."

It is contended, further, that since the avulsion of 1876 caused the old river bed to dry up, what is called "the doctrine of the submergence and reappearance of land" must be applied, so as to establish the ancient boundary as it existed at the time of the earliest record, in this case the year 1823, with the effect of eliminating any shifting of the river bed that resulted from the erosions and accretions of the half century preceding the avulsion.

This contention is rested chiefly upon a quotation from Sir Matthew Hale, *De Jure Maris*, c. 4: "If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that yet there be reasonable marks to continue the notice of it; or though the marks be defaced; yet if by situation and extent of quantity, and bounding upon the firm land, the same can be known, though the sea leave this land again, or it be by art or industry regained, the subject doth not lose his propriety; and accordingly it was held by Cooke and Foster, M. 7 Jac. C. B., though the inundation continue forty years." (1 Hargraves' Law Tracts, 15; Note to *Ex parte Jennings*, 6 Cow. 542.) To the same effect, 2 Roll. Abr. 168, 1. 48; 7 Comyns' Dig., tit. Prerogative, D. 61, 62; 5 Bacon's Abr. tit. Prerogative, B. 1. A reference to the context shows that the portion quoted is a statement of one of several exceptions to the general rule that any increase of land *per relictionem*, or sudden recession of the sea, belonged of common right to the King

as a part of his prerogative. It amounts to no more than saying that where the reliction did but restore that which before had been private property and had been lost through the violence of the sea, the private right should be restored if the land is capable of identification. Such a case was *Mulry v. Norton*, 100 N. Y. 424, the true scope of which decision was pointed out in *In re City of Buffalo*, 206 N. Y. 319, 326, 327. But this doctrine has no proper bearing upon the rule we have stated with reference to boundary streams. Certainly it can not be regarded as having the effect of carving out an exception to the rule that where the course of the stream changes through the operation of the natural and gradual processes of erosion and accretion, the boundary follows the stream; while if the stream leaves its former bed and establishes a new one as the result of an avulsion, the boundary remains in the middle of the former channel. An avulsion has this effect, whether it results in the drying up of the old channel or not. So long as that channel remains a running stream, the boundary marked by it is still subject to be changed by erosion and accretion; but when the water becomes stagnant, the effect of these processes is at an end; the boundary then becomes fixed in the middle of the channel as we have defined it, and the gradual filling up of the bed that ensues is not to be treated as an accretion to the shores but as an ultimate effect of the avulsion. The emergence of the land, however, may or may not follow, and it ought not in reason to have any controlling effect upon the location of the boundary line in the old channel. To give to it such an effect is we think, to misapply the rule quoted from Sir Matthew Hale.

How the land that emerges on either side of an interstate boundary stream shall be disposed of as between public and private ownership is a matter to be determined according to the law of each State, under the familiar doctrine that it is for the States to establish for themselves such rules of property as they deem expedient with respect to the navigable waters within their borders and the riparian lands adjacent to them. *Pollard's Lessee v. Hagan*, 3 How. 212, 230; *Barney v. Keokuk*, 94 U. S. 324, 338; *Hardin v. Jordan*, 140 U. S. 371, 382; *Shively v. Bowlby*, 152 U. S. 1, 40, 58; *St. Anthony Falls Water Power Co. v. Water Commissioners*, 168 U. S. 349, 358; *Scott v. Lattig*, 227 U. S. 229, 242. Thus, Arkansas may limit riparian ownership by the ordinary high-water mark (*Railway v. Ramsey*, 53 Arkansas, 314, 323; *Wallace v. Driver*, 61 Arkansas, 429, 435, 436), and Tennessee; while extending riparian ownership upon navigable streams to ordinary low-water mark, and reserving as public the lands constituting the bed below

that mark (*Elder v. Burrus*, 25 Tennessee [6 Humph.], 358, 368; *Martin v. Nance*, 40 Tennessee [3 Head], 649, 650; *Goodwin v. Thompson*, 83 Tennessee [15 Lea], 209), may, in the case of an avulsion followed by a drying up of the old channel of the river, recognize the right of former riparian owners to be restored to that which they have lost through gradual erosions in times preceding the avulsion, as she has done in *State v. Muncie Pulp Co.*, 119 Tennessee, 47. But these dispositions are in each case limited by the interstate boundary, and can not be permitted to press back the boundary line from where otherwise it should be located.

It is hardly necessary to say that *State v. Muncie Pulp Co.*, *supra*, and *Stockley v. Cissna*, 119 Fed. Rep. 812, relied upon in defendant's answer as judicial determinations of the boundary line, can have no such effect against the State of Arkansas, which was a stranger to the record in both cases.

Upon the whole case we conclude that the questions submitted for our determination are to be answered as follows:

(1) The true boundary line between the States, aside from the question of the avulsion of 1876, is the middle of the main channel of navigation as it existed at the Treaty of Peace concluded between the United States and Great Britain in 1783, subject to such changes as have occurred since that time through natural and gradual processes.

(2) By the avulsion of 1876 the boundary line between the States was unaffected, and remained in the middle of the former main channel of navigation, as above defined.

(3) The boundary line should now be located according to the middle of that channel as it was at the time the current ceased to flow therein as a result of the avulsion of 1876.

(4) A commission consisting of three competent persons, to be named by the court upon the suggestion of counsel, will be appointed to run, locate, and designate the boundary line between the States at the place in question in accordance with the above principles.

(5) The nature and extent of the erosions and accretions that occurred in the old channel prior to its abandonment by the current as a result of the avulsion of 1876, and the question whether it is practicable now to locate accurately the line of the river as it then ran, will be referred to said commission, subject to a review of its decision by this court if need be.

The parties may submit the form of an interlocutory decree to carry into effect the above conclusions.

COMMONWEALTH OF VIRGINIA *v.* STATE OF WEST VIRGINIA ET AL.*Supreme Court of the United States*

April 22, 1918

[246 U. S. 565.]

Mr. Chief Justice WHITE delivered the opinion of the court.

A rule allowed at the instance of Virginia against West Virginia to show cause why in default of payment of the judgment of this court in favor of the former State against the latter, an order should not be entered directing the levy of a tax by the legislature of West Virginia to pay such judgment, and a motion by West Virginia to dismiss the rule is the matter before us.

In the suit in which the judgment was rendered Virginia, invoking the original jurisdiction of this court, sought the enforcement of a contract by which it was averred West Virginia was bound. The judgment which resulted¹ was for \$12,393,929.50 with interest and it was based upon three propositions specifically found to be established: First, that when territory was carved out of the dominion of the State of Virginia for the purpose of constituting the area of the State of West Virginia, the new State, coincident with its existence, became bound for and assumed to pay its just proportion of the previous public debt of Virginia. Second, that this obligation of West Virginia was the subject of a contract between the two States made with the consent of Congress and was incorporated into the Constitution by which West Virginia was admitted by Congress into the Union and therefore became a condition of such admission and a part of the very governmental fiber of that State. Third, that the sum of the judgment rendered constituted the equitable proportion of this debt due by West Virginia in accordance with the obligations of the contract.

The suit was commenced in 1906 and the judgment rendered in 1915. The various opinions expressed during the progress of the cause will be found in the reported cases cited in the margin,² in the opinion

¹ See decision of March 6, 1911, holding West Virginia liable, this JOURNAL, Vol. 5 (1911), p. 523, and decision of June 14, 1915, ascertaining the amount due, 238 U. S., p. 202.

² 206 U. S. 290; 209 U. S. 514; 220 U. S. 1; 222 U. S. 17; 231 U. S. 89; 234 U. S. 117; 238 U. S. 202; 241 U. S. 531. [The last opinion is quoted in this JOURNAL, Vol. 10 (1916), p. 584. — Ed.]

in one of which (234 U. S. 117) a chronological statement of the incidents of the controversy was made.

The opinions referred to will make it clear that both States were afforded the amplest opportunity to be heard and that all the propositions of law and fact urged were given the most solicitous consideration. Indeed it is also true that in the course of the controversy, as demonstrated by the opinions cited, controlled by great consideration for the character of the parties, no technical rules were permitted to frustrate the right of both of the States to urge the very merits of every subject deemed by them to be material.

And controlled by a like purpose before coming to discharge our duty in the matter now before us we have searched the record in vain for any indication that the assumed existence of any error committed has operated to prevent the discharge by West Virginia of the obligations resulting from the judgment and hence has led to the proceeding to enforce the judgment which is now before us. In saying this, however, we are not unmindful that the record contains a suggestion of an alleged claim of West Virginia against the United States, which was not remotely referred to while the suit between the two States was undetermined, the claim referred to being based on an assumed violation of trust by the United States in the administration of what was left of the great domain of the Northwest Territory, — a domain as to which, before the adoption of the Constitution of the United States, Virginia at the request of Congress transferred to the government of the Confederation all her right, title and interest in order to allay discord between the States, as New York had previously done and as Massachusetts, Connecticut, South Carolina, North Carolina and Georgia subsequently did.¹ It is obvious that the subject was referred to in connection with the duty of West Virginia to comply with the requirements of the judgment upon the hypothesis that if the United States owed the claim and if in a suit against the United States recovery could be had, and if West Virginia received its share, it might be used, if sufficient, for discharging the judgment and thus save West Virginia from resorting to other means for so doing.

That judicial power essentially involves the right to enforce the results of its exertion is elementary. *Wayman v. Southard*, 10 Wheaton 1, 23; *Bank of the United States v. Halstead*, 10 Wheaton 57; *Gordon v. United States*, 117 U. S. 697, 702. And that this applies to the exer-

¹ Gannett, *Boundaries of the United States*, pp. 24-29.

tion of such power in controversies between States as the result of the exercise of original jurisdiction conferred upon this court by the Constitution is therefore certain. The many cases in which such controversies between States have been decided in the exercise of original jurisdiction make this truth manifest.¹ Nor is there room for contending to the contrary because in all the cases cited the States against which judgments were rendered conformably to their duty under the Constitution voluntarily respected and gave effect to the same. This must be unless it can be said that because a doctrine has been universally recognized as being beyond dispute and has hence hitherto in every case from the foundation of the government been accepted and applied, it has by that fact alone now become a fit subject for dispute.

It is true that in one of the cited cases (*South Dakota v. North Carolina*, 192 U. S. 286) it was remarked that doubt had been expressed in some instances by individual judges as to whether the original jurisdiction conferred on the court by the Constitution embraced the right of one State to recover a judgment in a mere action for debt against another. In that case, however, it is apparent that the court did not solve such suggested doubt, as that question was not involved in the case then before it and that subject was hence left open to be passed on in the future when the occasion required. But the question thus left open has no bearing upon and does not require to be considered in the case before us, first, because the power

¹ *New York v. Connecticut*, 4 Dallas 1, 3, 6; *New Jersey v. New York*, 3 Peters 461; 5 Peters 284; 6 Peters 323; *Rhode Island v. Massachusetts*, 7 Peters 651; 11 Peters 226; 12 Peters 657; 13 Peters 23; 14 Peters 210; 15 Peters 233; 4 Howard 591; *Massachusetts v. Rhode Island*, 12 Peters 755; *Missouri v. Iowa*, 7 Howard 659; 10 Howard 1; *Florida v. Georgia*, 11 Howard 293; 17 Howard 478; *Alabama v. Georgia*, 23 Howard 505; *Virginia v. West Virginia*, 11 Wallace 39; *Missouri v. Kentucky*, 11 Wallace 395; *South Carolina v. Georgia*, 93 U. S. 4; *Indiana v. Kentucky*, 136 U. S. 479; 159 U. S. 275; 163 U. S. 520; 167 U. S. 270; *Nebraska v. Iowa*, 143 U. S. 359; 145 U. S. 519; *Iowa v. Illinois*, 147 U. S. 1; 151 U. S. 238; 202 U. S. 59; *Virginia v. Tennessee*, 148 U. S. 503; 158 U. S. 267; *Missouri v. Iowa*, 160 U. S. 688; 165 U. S. 118; *Tennessee v. Virginia*, 177 U. S. 501; 190 U. S. 64; *Missouri v. Illinois*, 180 U. S. 208; 200 U. S. 496; 202 U. S. 598; *Kansas v. Colorado*, 185 U. S. 125; 206 U. S. 46; *South Dakota v. North Carolina*, 192 U. S. 286; *Missouri v. Nebraska*, 196 U. S. 23; 197 U. S. 577; *Louisiana v. Mississippi*, 202 U. S. 1; *Washington v. Oregon*, 211 U. S. 127; 214 U. S. 205; *Missouri v. Kansas*, 213 U. S. 78; *Maryland v. West Virginia*, 217 U. S. 1; 217 U. S. 577; 225 U. S. 1; *North Carolina v. Tennessee*, 235 U. S. 1; 240 U. S. 652; *Arkansas v. Tennessee*, 246 U. S. 158.

to render the judgment as between the two States whose enforcement is now under consideration is as to them foreclosed by the fact of its rendition. And second, because while the controversy between the States culminated in a decree for money and that subject was within the issues, nevertheless the generating cause of the controversy was the carving out of the dominion of one of the States the area composing the other and the resulting and expressly assumed obligation of the newly created State to pay the just proportion of the preëxisting debt, an obligation which as we have seen rested in contract between the two States, consented to by Congress and expressed in substance as a condition in the Constitution by which the new State was admitted into the Union. In making this latter statement we do not overlook the truism that the Union under the Constitution is essentially one of States equal in local governmental power which therefore excludes the conception of an inequality of such power resulting from a condition of admission into the Union. *Ward v. Race Horse*, 163 U. S. 504. But this principle has no application to the question of power to enforce against a State when admitted into the Union a contract entered into by it with another State with the consent of Congress, since such question but concerns the equal operation upon all the States of a limitation upon them all imposed by the Constitution and the equal application of the authority conferred upon Congress to vivify and give effect by its consent to contracts entered into between States.

Both parties admit that West Virginia is the owner of no property not used for governmental purposes and that therefore from the mere issue of an execution the judgment is not susceptible of being enforced if under such execution property actually devoted to immediate governmental uses of the State may not be taken. Passing a decision as to the latter question, all the contentions on either side will be disposed of by considering two subjects: first, the limitations on the right to enforce inhering in the fact that the judgment is against a State and its enforcement against such governmental being; and second, the appropriateness of the form of procedure applicable for such enforcement. The solution of these subjects may be disposed of by answering two questions which we propose to separately state and consider.

1. *May a judgment rendered against a State as a State be enforced against it as such, including the right to the extent necessary for so doing of exerting authority over the governmental powers and agencies possessed by the State.*

On this subject Virginia contends that as the Constitution subjected the State of West Virginia to judicial authority at the suit of the State of Virginia, the judgment which was rendered in such a suit binds and operates upon the State of West Virginia, that is, upon that State in a governmental capacity, including all instrumentalities and agencies of state power, and indirectly binding the whole body of the citizenship of that State and the property which by the exertion of powers possessed by the State are subject to be reached for the purpose of meeting and discharging the state obligation. As then, the contention proceeds, the Legislature of West Virginia possesses the power to tax and that body and its powers are all operated upon by the judgment, the inability to enforce by means of ordinary process of execution gives the right and sanctions the exertion of the authority to enforce the judgment by compelling the Legislature to exercise its power of taxation. The significance of the contention and its scope are aptly illustrated by the reference in argument to the many decided cases holding that where a municipality is empowered to levy specified taxation to pay a particular debt, the judicial power may enforce the levy of the tax to meet a judgment rendered in consequence of a default in paying the indebtedness.¹

On the other hand West Virginia insists that the defendant as a State may not as to its powers of government reserved to it by the Constitution be controlled or limited by process for the purpose of enforcing the payment of the judgment. Because the right for that end is recognized to obtain an execution against a State and levy it upon its property, if any, not used for governmental purposes, it is argued, affords no ground for upholding the power by compelled exercise of the taxing authority of the State to create a fund which may be used when collected for paying the judgment. The rights reserved to the States by the Constitution, it is further insisted, may not be interfered with by the judicial power merely because that power has been given authority to adjudicate at the instance of one State a right asserted against another, since although the authority to enforce the adjudication may not be denied, execution to give effect to that authority

¹ *Supervisors v. United States*, 4 Wallace 435; *Von Hoffman v. City of Quincy*, 4 Wallace 535; *City of Galena v. Amy*, 4 Wallace 705; *Riggs v. Johnson County*, 6 Wallace 166; *Walkley v. City of Muscatine*, 6 Wallace 481; *Labette County Commissioners v. Moulton*, 112 U. S. 217; *County Commissioners of Cherokee County v. Wilson*, 109 U. S. 621.

is restrained by the provisions of the Constitution which recognize state governmental power.

Mark, in words a common premise — a judgment against a State and the authority to enforce it — is the predicate upon which is rested on the one hand the contention as to the existence of complete and effective, and the assertion on the other of limited and inefficacious power. But it is obvious that the latter can only rest upon either treating the word "state" as used in the premise as embracing only a misshapen or dead entity, that is, a State stripped for the purpose of judicial power of all its governmental authority, or if not, by destroying or dwarfing the significance of the word "state" as describing the entity subject to enforcement, or both. It needs no argument to demonstrate that both of these theories are incompatible with and destructive of the very numerous cases decided by this court to which we have referred. As it is certain that governmental powers reserved to the States by the Constitution — their sovereignty — were the efficient cause of the general rule by which they were not subject to judicial power, that is, to be impleaded, it must follow that when the Constitution gave original jurisdiction to this court to entertain at the instance of one State a suit against another it must have been intended to modify the general rule, that is, to bring the States and their governmental authority within the exceptional judicial power which was created. No other rational explanation can be given for the provision. And the context of the Constitution, that is, the express prohibition which it contains as to the power of the States to contract with each other except with the consent of Congress, the limitations as to war and armies, obviously intended to prevent any of the States from resorting to force for the redress of any grievance real or imaginary, all harmonize with and give force to this conception of the operation and effect of the right to exert, at the prayer of one State, judicial authority over another.

But it is in substance said this view must be wrong for two reasons: (a) because it virtually overrides the provision of the Constitution reserving to the States the powers not delegated, by the provision making a grant of judicial power for the purpose of disposing of controversies between States; and (b) because it gives to the Constitution a construction incompatible with its plain purpose, which was while creating the nation, yet at the same time to preserve the States with their governmental authority in order that State and nation might

endure. Ultimately the argument at its best but urges that the text of the Constitution be disregarded for fear of supposed consequences to arise from enforcing it. And it is difficult to understand upon what ground of reason the preservation of the rights of all the States can be predicated upon the assumption that any one State may destroy the rights of any other without any power to redress or cure the resulting grievance. Nor further can it be readily understood why it is assumed that the preservation and perpetuation of the Constitution depend upon the absence of all power to preserve and give effect to the great guarantees which safeguard the authority and preserve the rights of all the States.

Besides, however, the manifest error of the propositions which these considerations expose, their want of merit will be additionally demonstrated by the history of the institutions from which the provisions of the Constitution under review were derived and by bringing into view the evils which they were intended to remedy and the rights which it was contemplated their adoption would secure.

Bound by a common allegiance and absolutely controlled in their exterior relations by the mother country, the colonies before the Revolution were yet as regards each other practically independent, that is, distinct one from the other. Their common intercourse more or less frequent, the contiguity of their boundaries, their conflicting claims in many instances of authority over undefined and outlying territory, of necessity brought about conflicting contentions between them. As these contentions became more and more irritating, if not seriously acute, the necessity for the creation of some means of settling them became more and more urgent if physical conflict was to be avoided. And for this reason, it is to be assumed, it early came to pass that differences between the colonies were taken to the Privy Council for settlement and were there considered and passed upon during a long period of years, the sanction afforded to the conclusions of that body being the entire power of the realm, whether exerted through the medium of a royal decree or legislation by Parliament. This power, it is undoubtedly true, was principally called into play in cases of disputed boundary, but that it was applied also to the complaint of an individual against a colony concerning the wrongful possession of property by the colony alleged to belong to him is not disputed. This general situation as to the disputes between the colonies and the power to dispose of them by the Privy Council was stated in *Rhode Island v.*

Massachusetts, 12 Peters 657, 739, *et seq.*, and will be found reviewed in the authorities referred to in the margin.¹

When the Revolution came and the relations with the mother country were severed, indisputably controversies between some of the colonies of the greatest moment to them had been submitted to the Privy Council and were undetermined. The necessity for their consideration and solution was obviously not obscured by the struggle for independence which ensued, for by the Ninth of the Articles of Confederation an attempt to provide for them as well as for future controversies was made. Without going into detail it suffices to say that that article in express terms declared the Congress to be the final arbiter of controversies between the States and provided machinery for bringing into play a tribunal which had power to decide the same. That these powers were exerted concerning controversies between the States of the most serious character again can not be disputed. But the mechanism devised for their solution proved unavailing because of a want of power in Congress to enforce the findings of the body charged with their solution, a deficiency of power which was generic because resulting from the limited authority over the States conferred by the Articles of Confederation on Congress as to every subject. That this absence of power to control the governmental attributes of the States for the purpose of enforcing findings concerning disputes between them gave rise to the most serious consequences and brought the States to the very verge of physical struggle and resulted in the shedding of blood and would, if it had not been for the adoption of the Constitution of the United States, it may be reasonably assumed, have rendered nugatory the great results of the Revolution, is known of all and will be found stated in the authoritative works on the history of the time.²

Throwing this light upon the constitutional provisions, the conferring on this court of original jurisdiction over controversies between

¹ Acts of the Privy Council, Colonial Series, Vols. I to V, *passim*; Snow, The Administration of Dependencies, Chap. V and *passim*; Gannett, Boundaries of the United States, pp. 35, 41, 44, 49-52, 73, 88; Story on the Constitution (5th ed.), §§ 80, 83, 1681.

² Fiske, The Critical Period of American History, pp. 147 *et seq.*; McMaster, History of the People of the United States, Vol. I, pp. 210 *et seq.*; Miner, History of Wyoming.

See also Story on the Constitution (5th ed.), §§ 1679, 1680; 131 U. S. Appendix L.

States, the taking away of all authority as to war and armies from the States and granting it to Congress, the prohibiting the States also from making agreements or compacts with each other without the consent of Congress, at once makes clear how completely the past infirmities of power were in mind and were provided against. This result stands out in the boldest possible relief when it is borne in mind that not a want of authority in Congress to decide controversies between States but the absence of power in Congress to enforce as against the governments of the States its decisions on such subjects, was the evil that cried aloud for cure, since it must be patent that the provisions written into the Constitution, the power which was conferred upon Congress and the judicial power as to States created, joined with the prohibitions placed upon the States, all combined to unite the authority to decide with the power to enforce, — a unison which could only have arisen from contemplating the dangers of the past and the unalterable purpose to prevent their recurrence in the future. And, while it may not materially add to the demonstration of the result stated, it may serve a useful purpose to direct attention to the probable operation of tradition upon the mind of the framers, shown by the fact that, harmonizing with the practice which prevailed during the colonial period in the Privy Council, the original jurisdiction as conferred by the Constitution on this court embraced not only controversies between States but between private individuals and a State, — a power which following its recognition in *Chisholm v. Georgia*, 2 Dallas 419, was withdrawn by the adoption of the Eleventh Amendment. The fact that in the Convention, so far as the published debates disclose, the provisions which we are considering were adopted without debate, it may be inferred, resulted from the necessity of their enactment as shown by the experience of the colonies and by the specter of turmoil if not war which, as we have seen, had so recently arisen from the disputes between the States, a danger against the recurrence of which there was a common purpose efficiently to provide. And it may well be that a like mental condition accounts for the limited expressions concerning the provisions in question in the proceedings for the ratification of the Constitution which followed, although there are not wanting one or two instances where they were referred to which when rightly interpreted make manifest the purposes which we have stated.¹

The State, then, as a governmental entity having been subjected

¹ Vol. 2, Elliot's Debates, pp. 462, 490, 527, 571, 573; The Federalist, No. 81.

by the Constitution to the judicial power under the conditions stated, and the duty to enforce the judgment by resort to appropriate remedies being certain even although their exertion may operate upon the governmental powers of the State, we are brought to consider the second question, which is:

2. *What are the appropriate remedies for such enforcement?*

Back of the consideration of what remedies are appropriate, whether looked at from the point of view of the exertion of equitable power or the application of legal remedies extraordinary in character (mandamus, etc.) lies the question what ordinary remedies are available, and that subject must necessarily be disposed of. As the powers to render the judgment and to enforce it arise from the grant in the Constitution on that subject, looked at from a generic point of view, both are federal powers, and comprehensively considered are sustained by every authority of the Federal government, judicial, legislative or executive, which may be appropriately exercised. And confining ourselves to a determination of what is appropriate in view of the particular judgment in this cause, two questions naturally present themselves: (a) the power of Congress to legislate to secure the enforcement of the contract between the States; and (b) the appropriate remedies which may by the judicial power be exerted to enforce the judgment. We again consider them separately.

(a) *The power of Congress to legislate for the enforcement of the obligation of West Virginia.*

The vesting in Congress of complete power to control agreements between States, that is, to authorize them when deemed advisable and to refuse to sanction them when disapproved, clearly rested upon the conception that Congress as the repository not only of legislative power but of primary authority to maintain armies and declare war, speaking for all the States and for their protection, was concerned with such agreements, and therefore was virtually endowed with the ultimate power of final agreement which was withdrawn from state authority and brought within the federal power. It follows as a necessary implication that the power of Congress to refuse or to assent to a contract between States carried with it the right, if the contract was assented to and hence became operative by the will of Congress, to see to its enforcement. This must be the case unless it can be said that the duty of exacting the carrying out of a contract is not, within the

principle of *McCulloch v. Maryland*, 4 Wheaton 316, relevant to the power to determine whether the contract should be made. But the one is so relevant to the other as to leave no room for dispute to the contrary.

Having thus the power to provide for the execution of the contract, it must follow that the power is plenary and complete, limited of course as we have just said by the general rule that the acts done for its exertion must be relevant and appropriate to the power. This being true it further follows, as we have already seen, that by the very fact that the national power is paramount in the area over which it extends, the lawful exertion of its authority by Congress to compel compliance with the obligation resulting from the contract between the two States which it approved is not circumscribed by the powers reserved to the States. Indeed the argument that the recognition of such a power in Congress is subversive of our constitutional institutions from its mere statement proves to the contrary, since at last it comes to insisting that any one State may by violating its obligations under the Constitution take away the rights of another and thus destroy constitutional government. Obviously if it be conceded that no power obtains to enforce as against a State its duty under the Constitution in one respect and to prevent it from doing wrong to another State, it would follow that the same principle would have to be applied to wrongs done by other States, and thus the government under the Constitution would be not an indissoluble union of indestructible States but a government composed of States each having the potency with impunity to wrong or degrade another, — a result which would inevitably lead to a destruction of the union between them. Besides it must be apparent that to treat the power of Congress to legislate to secure the performance by a State of its duty under the Constitution, that is, its continued respect for and obedience to that instrument, as coercion, comes back at last to the theory that any one State may throw off and disregard without sanction its obligation and subjection to the Constitution. A conclusion which brings at once to the mind the thought that to maintain the proposition now urged by West Virginia would compel a disregard of the very principles which led to the carving out of that State from the territory of Virginia; in other words, to disregard and overthrow the doctrines irrevocably settled by the great controversy of the Civil War, which in their ultimate aspect find their consecration in the amendments to the Constitution which followed.

Nor is there any force in the suggestion that the existence of the power in Congress to legislate for the enforcement of a contract made by a State under the circumstances here under consideration is incompatible with the grant of original jurisdiction to this court to entertain a suit between the States on the same subject. The two grants in no way conflict but coöperate and coördinate to a common end, that is, the obedience of a State to the Constitution by performing the duty which that instrument exacts. And this is unaffected by the fact that the power of Congress to exert its legislative authority as we have just stated it also extends to the creation of new remedies in addition to those provided for by Section 14 of the Judiciary Act of 1789 (1 Stat. 81, c. 20, now Section 262, Judicial Code) to meet the exigency occasioned by the judicial duty of enforcing a judgment against a State under the circumstances as here disclosed. We say this because we think it is apparent that to provide by legislative action additional process relevant to the enforcement of judicial authority is the exertion of a legislative and not the exercise of a judicial power.

This leaves only the second aspect of the question now under consideration.

(b) The appropriate remedies under existing legislation.

The remedy sought, as we have at the outset seen, is an order in the nature of mandamus commanding the levy by the Legislature of West Virginia of a tax to pay the judgment. In so far as the duty to award that remedy is disputed merely because authority to enforce a judgment against a State may not affect state power, the contention is adversely disposed of by what we have said. But this does not dispose of all the contentions between the parties on the subject, since on the one hand it is insisted that the existence of a discretion in the Legislature of West Virginia as to taxation precludes the possibility of issuing the order, and on the other hand it is contended that the duty to give effect to the judgment against the State, operating upon all state powers, excludes the legislative discretion asserted and gives the resulting right to compel. But we are of opinion that we should not now dispose of such question and should also now leave undetermined the further question, which as the result of the inherent duty resting on us to give effect to the judicial power exercised we have been led to consider on our own motion, that is, whether there is power to direct the levy of a tax adequate to pay the judgment and provide for its

enforcement irrespective of state agencies. We say this because, impelled now by the consideration of the character of the parties which has controlled us during the whole course of the litigation, the right judicially to enforce by appropriate proceedings as against a State and its governmental agencies having been determined, and the constitutional power of Congress to legislate in a twofold way having been also pointed out, we are fain to believe that if we refrain now from passing upon the questions stated, we may be spared in the future the necessity of exerting compulsory power against one of the States of the Union to compel it to discharge a plain duty resting upon it under the Constitution. Indeed, irrespective of these considerations, upon the assumption that both the requirements of duty and the suggestions of self-interest may fail to bring about the result stated, we are nevertheless of the opinion that we should not now finally dispose of the case, but because of the character of the parties and the nature of the controversy, a contract approved by Congress and subject to be by it enforced, we should reserve further action in order that full opportunity may be afforded to Congress to exercise the power which it undoubtedly possesses.

Giving effect to this view, accepting the things which are irrevocably foreclosed — briefly stated, the judgment against the State operating upon it in all its governmental powers and the duty to enforce it viewed in that aspect — our conclusion is that the case should be restored to the docket for further argument at the next term after the February recess. Such argument will embrace the three questions left open: 1. The right under the conditions previously stated to award the mandamus prayed for; 2. If not, the power and duty to direct the levy of a tax as stated; 3. If means for doing so be found to exist the right, if necessary, to apply such other and appropriate equitable remedy by dealing with the funds or taxable property of West Virginia or the rights of that State as may secure an execution of the judgment. In saying this, however, to the end that if on such future hearing provided for the conclusion should be that any of the processes stated are susceptible of being lawfully applied (repeating that we do not now decide such questions) occasion for a further delay may not exist, we reserve the right, if deemed advisable, at a day hereafter before the end of the term or at the next term before the period fixed for the hearing, to appoint a master for the purpose of examining and reporting con-

cerning the amount and method of taxation essential to be put into effect, whether by way of order to the State Legislature or direct action, to secure the full execution of the judgment, as well as concerning the means otherwise existing in the State of West Virginia, if any, which by the exercise of the equitable powers in the discharge of the duty to enforce payment may be available for that purpose.

And it is so ordered.

BOOK REVIEWS

A Survey of International Relations between the United States and Germany, August 1, 1914 — April 6, 1917. Based on Official Documents. By James Brown Scott, Doctor of Jurisprudence of the University of Heidelberg, etc. New York: Oxford University Press. 1917. pp. cxiv, 390.

In this admirable survey Dr. Scott has given us the most comprehensive and most thoroughly documented exposition of the relations of the United States to the Great War which has been published. Specifically it treats of the diplomatic relations between the United States and Germany, but it contains in addition a full account of the genesis of the war, the efforts of the United States to maintain neutrality, and the position taken by this country on all the great questions of international law arising from a state of belligerency and the consequent restraints upon commerce and international intercourse on the oceanic highways.

Very appropriately, after the full text of the President's recommendation to Congress that a state of war be declared to exist between the United States and the Imperial German Government and the joint resolution of Congress upon this subject, the introduction to this volume is devoted to a general exposition of German conceptions of the state, international policy, and international law. Citations from sovereigns, statesmen, jurists and philosophers amply illustrate the distinctive and exceptional doctrines which have animated Prussian policy, and may be summed up in the words of Frederick the Great: "Know once and for all that in the matter of Kingcraft we take when we can, and that we are never wrong unless we have to give back what we have taken."

Before entering specifically into the subject matter indicated by the title of this volume, a chapter is devoted to the genesis of the war of 1914. Foremost in this brief but lucid historical sketch is placed the ambition of Prussia, the veritable and primary cause of the present war. The scheme of Bismarck first to exclude Austria from the circle of German States and then to use it as a satellite is of first importance in an

explanation of the causes of the existing situation. "Austria-Hungary, excluded from Germany and without chance of developing to the north or to the west," says Dr. Scott, "was to be given a field of exploitation to the south through the Balkan peninsula to the Ægean, until such time as 'the logic of events,' as Bismarck would say, should force the Imperial German Government to supplant Austria," a project which now appears practically realized. The assassination of the Archduke Francis Ferdinand and his morganatic wife on June 28, 1914, furnished the occasion for the armed intervention on the part of Germany necessary to complete the Prussian control of the destinies of the Balkan States and the practical absorption of Austria. "The time was about ripe for the wedge to be driven through the Balkans and to have its keen edge cut through to the Persian Gulf, . . . with a line of communication from the Kiel Canal to the Persian Gulf, through Berlin, Vienna, and Bagdad." The documentary evidence showing Germany's responsibility for the war is here indicated rather than definitely elaborated, which would require greater space than the author's plan could assign to it; but the sources of information are admirably tabulated, showing with precision the attitude of each of the Powers.

Turning now to the relations between the United States and Germany during the war, in a second chapter Dr. Scott gives an ample account of the neutrality of the United States and the effort of our government to maintain it. Not only was the usual proclamation of neutrality promptly issued; but, as is pointed out in his desire to avoid even the impression of unneutral opinion, the President made a special appeal to his fellow countrymen to be neutral in thought as well as in deed.

The difficulties encountered in maintaining this attitude were many and were greatly augmented by the conduct of the Imperial German Government. These difficulties are discussed in this work with much detail in chapters on Censorship of Communications; Unlawful Seizure of Persons upon the High Seas; Restraints on Commerce; Sale of Munitions of War; Submarine Warfare; Reprisals and Retaliation; Belligerent Use of Neutral Flag; Mines, War Zones, and Blockade; Status of Merchant Vessels; and many other matters relating to neutral and belligerent rights.

All of these discussions possess a double value, being at the same time of a historical nature, written with the authority of one who, as

adviser in these matters, has been in close touch with every step of their development, and involving problems of jurisprudence upon which, as an accomplished international lawyer, the author is able to comment in a most instructive manner.

From the point of view of the international jurist there is, no doubt, much that is debatable regarding the rights and duties of neutrals and belligerents; for upon many points the law of nations is not only indefinite but imperfect. Dr. Scott has, however, not found it difficult to justify the course of the Government of the United States both in its complaints of violation of neutral rights by the belligerents and in the defense of the conduct of the American Government in the course it has pursued. Very effectively, so far as complaints emanating from Germany and from German sympathizers in this country are concerned, he has appealed to the standard of neutral right and duty as set forth in the German *Kriegsbrauch im Landkriege*, which presents a rather lax conception of neutrality as compared with the standards and practice of the United States. Undoubtedly, the inferiority of Germany in sea-power rendered the relations of that country and the Entente Allies with the United States very unequal; but this fact was in no respect a fault of the American Government. An attempt to destroy that inequality in the interest of Germany would have been a violation of neutrality so gross as to be utterly indefensible and would have offered a *casus belli* to the governments against which it would have been directed.

There were, undoubtedly, restraints upon commerce on the part of the British Government against which, in the interest of American commerce and the American conception of neutral rights at sea, the Government of the United States was fully justified in protesting, and against which it did protest; but these were never of a nature that demanded a declaration of war. They were of a nature that rendered possible material compensation, and that this upon proper adjudication would be offered, was never denied on the one side or doubted on the other. But the German violations of neutral rights were of a different character. They struck at noncombatant life a deadly blow by the use of the submarine. They assumed an exclusive control of vast areas of the high seas. They sank neutral ships, with their noncombatant crews and passengers, without observing any of the legal requirements of warning and search, and they did this in an unexampled spirit of insolence and ferocity in waters closely adjacent to the shores of the

United States. All this is fully and impressively recorded in this volume, and it is the resort to this menace and violence more than any other cause, though others were not wanting, which, in the opinion of Dr. Scott, not only justified but necessitated the declaration by the United States of a state of war in which Germany was the aggressor.

As a foremost advocate of an international court and of the judicial settlement of international disputes, it might be expected that, somewhere in this volume, Dr. Scott would raise the question, which he so ably answers in the eighteenth chapter of this work, "Why not Arbitration?" The section on the German attitude toward arbitration recounts the position on this subject taken by Germany in the two Hague Conferences and the efforts of the American Secretaries of State to negotiate with Germany a treaty of arbitration. In the midst of all importunities, the Imperial German Government has stood aloof from arbitration; which, if adopted, might have prevented the Great War altogether, for the alleged reason for resorting to war was a judicial question. Certainly, the United States could not allow murder on the high seas to go on indefinitely, in the expectation that there would some day be a judicial settlement in which the only penalty would be a money indemnity. The futile efforts of the United States to secure an arbitration of the case of the *William P. Frye* sufficiently demonstrates the impracticability of an attempt to settle by arbitration the differences which had arisen between the American and the Imperial German Governments. The problem before the United States was the prompt compulsion of Germany to abandon a career of crime.

In a final chapter the author of this volume touches the problem of "The Freedom of the Seas," which he considers largely from a historical point of view, especially with reference to the meaning of the expression "the high seas," ending with the fundamental principles laid down by Grotius. Here, without doubt, taking into account the actual status of sea law, much progress is yet to be made when the nations are ready to reopen this vast subject. So long as war is regarded as permissible, there will be certain rights of belligerents on the sea; but so long as innocence is considered inviolable, neutral rights will be even more evident. The problem of adjusting these conflicting claims depends upon postulates of equity and a growth of opinion regarding peace and war which will in the future give a new aspect to the laws of the sea; for the interests of peaceful commerce will unquestionably outweigh the interests of international conflict.

Regarding Dr. Scott's book as a whole, it is throughout scholarly in its method and workmanlike in its execution. Abundant notes point to supplementary reading, a good index renders reference easy, and the style is clear and forceful. The volume is quite indispensable to the international lawyer, will be extremely useful to the historian, and has much interest for the general reader. The dedication of the volume to the Honorable Robert Lansing, Secretary of State of the United States, is most appropriate; and the direction that the royalties due to the author be presented to the Department of State War Relief Work Committee, of which Mrs. Robert Lansing is President, is in the high spirit of patriotism and devotion to human welfare that marks the work and the life of Dr. James Brown Scott.

DAVID JAYNE HILL.

The Law relating to Trading with the Enemy together with a Consideration of the Civil Rights and Disabilities of Alien Enemies and of the Effect of War on Contracts with Alien Enemies. By Charles Henry Huberich. New York: Baker, Voorhis & Company. 1918. pp. xxxiii, 485.

When the United States entered the war in April, 1917, the general principles of law relating to the status of alien enemies and to trade with the enemy were already well settled by the decisions of the courts of this country in the early part of the nineteenth century and during the Civil War, as well as by the decisions of the English courts prior to and during the present war.

There was, however, no existing statute under which criminal penalties could be imposed for illegal trading. Moreover, legislation was imperatively necessary on the subject of enemy trade, in order to meet the new conditions of modern economic life and of modern warfare. The enemy had allies whom it became necessary to treat in law as enemies of the United States even though we were not then at war with these allies. It was also evident that the term "enemy" must be extended beyond its common-law sense; neutral countries were filled with German subjects, naturalized Germans, and German sympathizers, whose business activities in aid of Germany must be curbed so far as their connection with our own citizens was concerned. The common law did not in this respect meet the necessities of the case; and legis-

lation was needed to amplify the scope of the classes of persons who, for the purposes of the Act, might be treated as "enemies" by the United States. The term "trade" as used in the Napoleonic Wars, the War of 1812, and even the Civil War, was not sufficiently broad to cover all the actions which it was desirable to prohibit during the present war. The complexity and development of modern business demanded greater stringency in certain directions than the old judicial decisions provided for. In former days, trade consisted almost wholly in the actual sale and transfer of commodities; today the building up of assets, funds, and credits in this country and their transfer by letter, cable, or wireless demanded rigorous supervision and prevention. A new method of dealing with the large German property interests in this country was proposed, which required legislation, *viz.*, the taking over of such property by the government and the investment of its proceeds in government bonds—thus conscripting the enemy's property and fighting him with his own money, while at the same time conserving his money in the safest investment.

The Trading with the Enemy Act, of October 6, 1917, was drafted, therefore, with a view to deal with these new conditions of modern warfare. It was intended to supplement the previous law as developed by judicial decision; in some directions it was designed to change the previous law; but it was *not* designed to codify the whole law upon the subject, and it specifically provided that the common law should govern in all matters not within the scope of its enactment. It left, therefore, many important topics to be determined very largely by the common law or by State laws then in force—topics like the effect of war upon contracts; interest on debts due to enemies; devises and bequests to enemies; suspension of statutes of limitations; termination of agency, etc., etc.

Because of the fact that the statute was not intended as a codification of the whole law of enemy trade, the volume now under review is of great importance, presenting as it does, not merely a commentary on the statute, but also a very complete statement of the law as it existed prior to the statute's enactment. Indeed, a work of this kind is almost indispensable to every business man, as well as to every lawyer, since never before in history have the commercial transactions of this country been so largely regulated by legislation, or been so extended in foreign trade.

It is fortunate that the preparation of this book has been undertaken

by so competent an author. Mr. Huberich is not only a lawyer of New York whose practice has been intimately concerned with the topic treated by him, but a former professor of law at Leland Stanford Jr. University. His book is not a mere hasty compilation of authorities put forth to meet a sudden demand for a book on a subject little known to lawyers of today. It shows throughout long and careful study and a thorough acquaintance with the underlying principles, not only of the general law of the subject, but also of the particular statute in question and of similar legislation in other countries. The author does not content himself merely with a statement of the law, but offers helpful comments and suggestions as to the construction, the omissions, and the inclusions of the statute. The citation of cases appears to be unusually full; on some few topics, however, further cases might be found, notably on the question of the effect of war upon the statutes of limitations, as to which the able article by Professor Charles Noble Gregory in the *Harvard Law Review*, Vol. XXVIII (May, 1915), might have been consulted with advantage. (In fact, in this book, as in many modern law books, it would be of great assistance to the reader if authors would cite the many important articles in leading American and English law reviews on the subjects treated; such articles on the law of trading with the enemy having been particularly valuable and numerous since 1914.)

The scope of Mr. Huberich's book is satisfactory; it starts with a brief summary of legislation in France, Italy, Russia, Japan, Germany and Austria-Hungary, Turkey, and the British Empire (the British Statutes and Orders in Council, 1914-1916, being given in full in the appendix); it then treats of the legislative history and general purposes of the Act of October 6, 1917. It then takes up the statute, section by section, and sentence by sentence, discussing the scope and intent of each, and stating with considerable fullness the decisions of the American and English courts on the particular phase of the subject of the legislation. The preface of the book is dated February 1, 1918.

The intent of those who drafted, those who approved, and those who enacted the statute in question was to conform to the more enlightened and modern view of warfare, namely, that the rigors of war should not fall on private persons or property of the enemy any more than was necessary for the safety of the State. As long ago as 1814, Chief Justice Marshall declared in *Brown v. United States* (8 Cranch, 110, 122) that while the power of Congress over enemy persons and

property was plenary, nevertheless the consensus of modern Christian nations was opposed to confiscation or undue harshness of treatment. The great change in conditions of warfare today, whereby war has become, not a conflict of armed troops, but a conflict into which all the industrial and commercial forces and resources of the opposing nations are thrown, may now require a reversion to the older and more rigorous treatment accorded to enemy property. The statute, as drawn, leaves it open to its administrators to adopt such a more rigorous policy if conditions, or necessity of retaliation for acts of Germany, so require. The statute leaves to Congress the final disposition of enemy property taken over by the Alien Property Custodian. It provides for a large extension of the term "enemy" by the President whenever he shall deem that conditions demand such extension (and he has made such extensions since the date of writing of this book).

It is entirely possible that conditions ascertained since its passage may also render necessary certain amendments in order to perfect the de-Germanization of so many American businesses which, we now discover, have been absorbed by German capital and German interests, and in order to avoid the accumulation of profits for the benefit of Germans after the war. But even if the statute shall be so amended, Mr. Huberich's book will still remain, because of its thorough statement of the general principle of the law, a necessary guide to all who desire to know how far their commercial operations will or will not be valid.

CHARLES WARREN.

Three Centuries of Treaties of Peace and their Teaching. By the Right Hon. Sir Walter G. F. Phillimore, Bart., D.C.L., LL.D.¹

"The history of human legislation is a record of error and presumption," said the Hon. E. G. Ryan, Chief Justice of Wisconsin, in a somewhat famous address nearly fifty years ago. The history of treaties of peace certainly has a considerable resemblance to the record of legislation. Yet the only advice for the future open to us is derived from the past. A study of all that men have attempted to seal up "The purple testament of bleeding war" since the time of Grotius, founder of modern international ideas, is obviously opportune and timely, and Sir Walter deserves our thanks for undertaking it.

¹ The announcement that Sir Walter has been advanced to the peerage, taking the title of Lord Phillimore, arrives as this review goes to press.

No man by heredity, taste, experience, and acquirements could be better equipped for the survey and presentation of this broad subject. The oldest son and heir of the late Sir Robert Phillimore, who was the author of the celebrated commentaries upon international law and an eminent judge in matters of admiralty and the law of nations, Sir Walter has maintained the reputation of the father both upon the bench and as a publicist. Sir Robert's *magnum opus* is perhaps the most considerable and authoritative of the English compendiums in this noble branch of law, and Sir Walter has to his credit its second and third editions. He has served as President of the International Law Society, and those of us who assist at its sessions know the zeal and interest he has always displayed for the society and the commanding position he holds in it. Sir Walter is also one of the chief laymen in the Church of England and one of the greatest authorities in all pertaining to its law, history, and policy. Many American and foreign scholars have known and enjoyed the very generous hospitality of his London residence, Cam House, Campden Hill, immediately adjoining and rivaling, with its groves, lawns, and gardens, the yet more famous Holland House. It was, until the time of the late duke, Argyle Lodge, the town house of the Dukes of Argyle. A rambling gothic house called The Coppice, at Henley on Thames, surrounded by an estate of some five hundred acres, was inherited by Sir Walter from his father, who, though opposed to such laws, availed himself of one of the last of the enclosure acts and so acquired most of this tract.

In this charming old house interest seems to center about a beautiful painting of Hugo Grotius, with clear-cut aquiline face and white Elizabethan ruff, which hangs on the wall, mellowed and made venerable by nearly three hundred years of time. This portrait was bought by Sir Robert from The Doctors' Commons on their dissolution and is reputed to have been presented to them by Grotius himself on his becoming a member of that learned body. Sir Walter prints an admirable reproduction of it as the frontispiece of his book, and dedicates his work "to the memory of Grotius," under whose portrait, he adds, "much of this essay has been written."

In the preface of four pages outlining the purpose and scheme of the book, Sir Walter says his excuse for the work is that "We are all looking forward to the future peace. We are longing for it." At the same time we are conscious of the difficulty of making a sure and lasting peace. "Never was there a war," he says, "in which so many

nations were engaged, never has there been a settlement of so many questions as this peace will have to settle," involving the creation, dissolution, and division of states, their future tranquillity, and, if war recurs, restraints against savagery or barbarism. To aid these ends he conceived and has here presented "an historical analysis of past Treaties of Peace" as a guide for the future.

He finds "the direct origin of the present war . . . in the treaty which concluded the Franco-German War, in the Balkan settlement made by the Congress of Berlin, in the lasting unrest of Poland and in the ambitions and military dominance of Germany." He treats the Franco-German War as "an ending of the constitution bequeathed by the Congress of Vienna." He thinks, in turn, that constitution was due to the Emperor having lost his position as ruler of the Empire since the Seven Years' War and because of the position acquired by Prussia in the Treaties of Aix-la-Chapelle and Hubertsburg; that the Peace of Westphalia, admitting the practical independence of the several German units, gave Prussia her opportunity, though her rise to a chief place among these units has to be traced back to the Treaty of Oliva and the displacement of Sweden as chief of the Baltic Powers.

The partition of Poland, while aggrandizing Austria, Russia, and Prussia, "brought these three great states into overclose neighborhood, joined them for a time in a common purpose, but ended by making them jealous and fearful of each other; so that Prussia, now become Germany, could justify her vast armaments as a necessary precaution against the attack of France on one side and Russia on the other."

Some of the European treaties, however, he thinks "accomplished their object; many were useful for a time; some would have procured a long peace but for unfortunate dynastic accidents." He seeks to draw "profitable lessons" from their success or failure, and to deduce "some assistance and some warnings for the future treaty." Moreover, he aims at the prevention of war and its humanization when it can not be prevented. He says:

Treaties of the eighteenth century give us lessons in regulation (of war), treaties of the nineteenth in humanization; while the twentieth century began with attempts at prevention, imperfect unhappily and too weak to stand severe strain, but not without value as guides to a more perfect scheme in the future.

The first chapter is headed, "Conditions of a Just, Lasting and Effective Treaty of Peace." Sir Walter there says: "Retribution,

no doubt, there should be" as a deterrent, but it "should not take the form of depriving states of population and territory without regard to the wishes of the population of the ceded territory or without due consideration of geographical lines." He insists that we are not, as in past times,

dealing with monarchs as if they were proprietors. . . . We are dealing with peoples and nations. They must suffer, no doubt, for the wrong-doing of their Governments, but they should not be permanently severed from the country to which they are attached, nor put in subjection to an alien rule, merely in order to punish their former country for engaging in war.

Sir Walter says, "Retribution is best exacted in money, in munitions of war, in ships, or by the destruction of fortresses and war material. Perhaps also in the punishment of those who stirred up the strife." He thinks "distributive justice" the principal object of the treaty, having regard to the safety of every state, small or large.

He states nine maxims, so called, as the foundation of treaties. Some of them, however, seem hardly to possess the form and condensation of maxims, but are rather argumentative and extended statements or observations. To summarize them briefly, however, they are as follows:

1. Boundaries between states must be natural according to geography or orography, well marked, strong for defense, not tempting to aggression.

2. If possible, no state composed of people desirous of union should be divided.

3. The doctrine of balance of power can not be forgotten while states and rulers remain ambitious and covetous. (He adds that the alternative of a League of Peace would find more favor if not for the unsavory memory of the Holy Alliance of 1815.)

4. The treaties should operate immediately and finally and impose as future obligations only observance of the laws of nations and the preservation of peace.

5. No burdens should be laid impairing sovereignty or independence. (These he says "tend to produce irritation and war," and have not generally endured.)

6. Protectorates or suzerainty are objected to; also treaties of guarantee, as sources of future trouble.

7. In cases of grave necessity, where the dominant state is much

benefited and the servient little harmed, protectorates have sometimes worked well. (Sir Walter suggests that a protectorate with guarantee may prove the only way of dealing with Turkey.)

8. No treaty imposing special obligations ought to be expected to be perpetual.

9. That there are treaties, like those of Napoleon with Austria and Prussia, which impose such restraints that no reasonable politician can expect them to endure and which are but scraps of paper in the absence of material guarantees.

Sir Walter also deems the form of treaties important. Vague language must be avoided. After the present war the so-called "amnesty clauses" must be modified and improved, particularly as to restoration of prisoners, dealing with the enemies charged with military or common-law crimes, and the dealings of those in occupied territory with their conquerors. He says provisions as to the laws of war are not generally found in treaties of peace, but in those of commerce and navigation, or in the acts of congresses like those at The Hague; but that after this war they ought to be inserted in the final treaty of peace, first, to make war less inhuman, second, to prevent war, by taking away from some nations the temptation to rely upon their superior capacity of committing atrocious acts as an element of success in war.

The list of authorities cited by Sir Walter is limited. Continental authorities as Pufendorf and Vattel; such English names as Twiss, Hall, Maine; such well-known modern names as Westlake, Oppenheim, and Lawrence; such American scholars as Halleck, Wharton, Moore, and Woolsey and, in general, the Germans are not referred to. Our ancient and admirable classic, Wheaton, is about the only American scholar named. The special character of the subject may, however, account for this frugality.

Sir Walter believes that the great settlement at the Congress of Vienna in 1815 is the precedent which must be in the minds of those who will frame our peace. He finds in it encouragement and also warning. It closed twenty-three years of war, involving all of Europe and portions of Africa, Asia, and North and South America. The main treaty has 121 articles, and the diplomatic instruments connected with it cover 227 pages. France had been the great conqueror, but suffered ultimate defeat. She was put back to her old boundaries and lost various colonies to Great Britain and to Spain. All these arrangements proved enduring. The readjustments in Italy, in which the interests

of princes were more considered than those of peoples, utterly broke down. Norway was taken from Denmark and given to Sweden in disregard of its people's wishes. Disagreements continued till they fell asunder in 1905.

Among the successful series of treaties, he discusses those which unified Germany and Italy.

A chapter is given to the Treaty History of Eastern Europe and another to Extra-European Treaties of Peace. The latter chapter starts with the statement: "The United States of America have had few wars. Confederations, as a rule, do not fight." Sir Walter perhaps quite naturally finds the Treaty of Versailles of 1783, which established our independence, one which "does not afford many subjects of comment." It was a treaty of recognition, not of future stipulations; and in the same way he finds the Treaty of Ghent of 1814, at the end of our War of 1812, equally uninteresting as it "was in substance a restoration of the *status quo ante*." He finds no lessons in our treaties with Mexico or that with Spain of 1898, except that in the latter, as an instructive detail, "In lieu of the usual clauses providing for indemnities to private persons, each state relinquishes all claims to indemnity, national or individual."

The Treaty of Portsmouth of 1905, between Japan and Russia, he finds of a much more unusual stamp. The striking feature was that it extensively involved China and Corea, though they were not parties to it. Sir Walter calls attention to the fact that "the expense of the keep of prisoners on both sides was to be calculated, and Russia, which had taken the fewer prisoners, was to pay the difference. . . . This is," he says, "a useful provision which might be remembered when the new treaty is prepared."

Sir Walter gives one chapter to Treaties Concerning the Laws of War. The vital defect in all these, he points out, is the difficulty of their enforcement. As he says, in case of violation the only remedy of the others "is to fight all the harder and to appeal to neutrals." In some cases, few and far between, as in bombardment of open towns, "reprisals can be used," he says, "with effect." Also, the victors can exact indemnity to be paid to the sufferers for such violation as a condition of peace, or can punish the individual offenders. Thus, he says, the United States after the War of Secession "punished certain Southerners who were deemed to have illtreated Northern prisoners."

He collects many humane provisions, as for lessening suffering,

protecting noncombatants and prisoners of war, found in treaties between two states and also in general international agreements. Most of these are modern, but some are quoted of as early origin as 1667. It must be a source of deep humiliation to all humane students of international affairs to observe how unenforceable and ineffective these have proved in the present vast and savage contest. "It is no use having these rules," he says "it is of no use trying to improve them, unless there be some security for their enforcement." Perhaps there is an innate and perpetual difficulty in prescribing or adhering to moral principles when, as old Montaigne says, "The public weal requires that men should betray and lie and massacre," and yet, by all that is holy, let us keep on trying.

Sir Walter expresses the belief that the experience of the present war will cause the abandonment of the plan, so often and so strongly urged, of giving up the right to capture enemy's property at sea. On the other hand, he confidently advocates the abrogation of the rule of the Declaration of Paris on that subject and that the ancient and severe rule of the prize law of Great Britain, fully supporting such captures, be made of universal application.

He shows that the effort of Continental statesmen, diplomats, and publicists is to make all wars soldiers' wars. This reviewer would suggest that a tendency on the part of Great Britain to make all wars sailors' wars is perhaps equally noticeable. *Self-interest is quite as much the mainspring of action in diplomacy and statesmanship as in trade.* Sir Walter's views are, as is most natural, strongly and distinctly British, and in a manner almost naïve he suggests, from time to time, that the view which British interests require ought, as a matter of course, to prevail. The United States has inherited her law and her legal system and conception so almost wholly from England, and her situation of separation by the ocean from all great Powers is so analogous to that of Great Britain, that her declarations and decisions have very commonly conformed to the British international rules, and an American lawyer easily consents to them. Allied action in war tends to solidarity of view and mental as well as military coördination. Obviously, however, such rules must be derived from a wider and more world-wide survey, and in determining their terms, conflicting interests must be considered. Mutual concession is imperatively required, and compliance with the needs and ideas of the great majority of men must be the test of their authority.

Sir Walter points out that the Declaration of London of 1909 had for its general object to favor neutrals and reduce the power of belligerents; that it was never ratified, and, "by an irony of fate, its effect, so far as it has gone, has been disastrous to neutrals during the present war." He describes its conclusions as to the destruction of neutral prizes as "lame and impotent" and says "this war has shown the mischief of them. No door ought to be open for such outrages upon neutrals and upon noncombatant subjects of a belligerent state when traveling on neutral vessels, as the construction put upon these articles by Germany and Austria-Hungary has enabled them to commit." The Declaration, however, is so extensively repudiated and discredited that it hardly requires discussion. He says of the doctrine that neutral ships may be sunk in case of necessity: "The old doctrine as to captures at sea has been thought in times past to press hardly enough upon neutrals. This Russo-German extension makes the position of neutrals almost more intolerable than that of belligerents."

A brief chapter shows How Treaties are Brought to an End, and the work closes with a chapter of thirty-seven pages entitled Conclusions. This is written on the theory of a victory of the Allies sufficient to enable them to enforce moderate and reasonable demands. To summarize its results, he finds no hope in neutralized states, since Belgium, Luxemburg, and the Congo State have been involved in the present war, and no better hope in a chain of buffer states between France and Germany. He has some hope in the restoration of the balance of power, a principle held in mind ever since the Peace of Westphalia in 1648. He finds the entry of our country into the war in this respect invaluable and quotes Canning's famous phrase that the New World has been called in "to redress the balance of the old." He quite naturally and probably justly thinks the preponderance in power of Great Britain a less danger than that of the Central Powers, since they are compact, and she scattered and with diverse interests. "She has become a confederation," he says, "and confederations, as has been said, seldom fight." He is against "inconclusive treaties of peace," which he thinks but truces. Annexation of unwilling territory and peoples he condemns as without safety or repose. "Cession and retrocession," he says, "should be, if possible, absolute, not encumbered with conditions or stipulations as to the future." Protectorates may be sometimes necessary but are to be avoided. Guarantees are idle things. He demands "the restoration of Belgium, Serbia and Monte-

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negro, with the compensations due to them." He says, "Luxemburg is entitled to her freedom," but asks whether she prefers to remain "the most vulnerable of the small states of Europe." As to Roumania, France, and Russia he demands a restoration to the *status quo*. He thinks Japan, Australia, and New Zealand will wish no German foothold left in the Pacific. As to Alsace and Lorraine he thinks the population should be consulted and that France should have pecuniary indemnities. Great Britain will have given as much in blood and more in treasure than any. Her main reward will be the safety of India and her colonies. He suggests that she keep Cyprus and that Heligoland be returned to Denmark, to remove a German menace to England. He sees great difficulty in retrocession of the German colonies, and thinks perhaps the Allies will conclude that Germany can not be trusted with any power over subject races (a conclusion amply supported by experience). He finds many difficulties and inconsistencies in a Polish state. He protests with all his might against any forcible dissolution of the German Empire, believing her union has been the result of the thought, toil, and self-sacrifice of her finest spirits for generations, and that its dissolution would be the reversal of the "respect for nationalities" of which the Allies speak, and create a lasting sore. As to Turkey, he anticipates independence for the Sultans of Egypt and Mecca, and for Albania; that the freedom of the Black Sea and her connections with the Mediterranean will be assured. He suggests that Russia and Great Britain retain their conquests in Turkey, a course already adopted by Russia with ghastly consequences; that France reassert her protectorate of the tribes of Lebanon; that Constantinople and the neighboring shores be ruled by a small protected state; that the remnant of Turkey form a new state under control of the four great Allied Powers of Europe, and that she be not allowed to continue under German influence or dominion.

He thinks there should be such exceptions in the amnesties that war crimes may be punished by court-martial, even by death, though the criminal be general, admiral, minister, or *sovereign*. There must be such occupation of enemy territory as will secure payment of indemnity. Sir Walter advocates a general amendment of the laws of war, such as prohibiting the use of civilians as a screen against the fire of the enemy as well as brutality to women; despoliation of the civil population; the sinking of a merchant ship, belligerent as well as neutral, not seeking to escape or to resist, unsummoned, and without making those on board safe. A command to commit a war crime, he contends,

should be unlawful, and obedience should not be due nor should such order be held a justification or defense. If this were established, the lot of a common sailor, or soldier, or subaltern passing on the validity of his commander's orders would prove a hard one.

For the enforcement of these rules, Sir Walter thinks the treaty should provide that each state or party to it contracts with every other a party to it to observe the rules and that a breach may be treated as an offense against *all states parties thereto*; that any party to the treaty may remonstrate at any breach, and if not heeded, may proceed to acts of retortion and even to war.

The writer of this must earnestly differ with his honored friend, Sir Walter, as to the efficiency and wisdom of these provisions. He realizes the difficulty and the need that it be met, but he believes the method suggested could not be made effective, and if adhered to, would merely tend to make belligerency as catching as typhus. He urges that the delimitation and confinement of war ought rather to be sought. The vastly increased savagery and suffering of a world-wide war, with no powerful neutrals whose favor must be sought by some semblance of humanity and justice, and whose supplies lessen want, are at present forced on the attention of all men.

Sir Walter finds limitations of armament seductive as proposals, impracticable in fact. He commends arbitration, but he considers standing tribunals necessary to which any state may apply as of right.

There is appended a chronological list of treaties from 1582 to 1913, and that rare desideratum, a full and extended index covering 40 pages in a book of 184 pages. The work as a broad, scholarly but condensed *revue* of the peace treaties of three centuries has undoubted interest and value. The sturdy loyalty to the interest of his own country in the time of her danger is natural and not unengaging, but it takes off from the convincing character of the views expressed and conclusions reached at least for all of other nationality. The suggestions for the solution of the present difficulties at the close of the war are marked by great moderation so far as the demands of England are concerned, and are entitled to a respectful perusal. The problems are too intricate and the contest too heated and too far from finality to make them clear and controlling. Victory must be won first. Crystallization is far more perfect and orderly in a fluid not seriously agitated. We must still conclude

Our business in the field of fight
Is not to question, but to prove our might.

CHARLES NOBLE GREGORY.

Die Gestaltung des Völkerrechts nach dem Weltkrieg. By Otfried Nippold. Zürich: Art. Institut Orell Füssli. 1917. pp. 285.

The author of this work is widely and favorably known as a distinguished Swiss publicist on international law. His first important book entitled *Der völkerrechtliche Vertrag* was published in 1894. In 1907 there appeared *Die Fortbildung des Verfahrens in völkerrechtlichen Streitigkeiten*. This was followed in 1911 by a scholarly study on *Die zweite Friedenskonferenz*. Nippold was also one of the first writers to collect evidence demonstrating the chauvinistic tendencies of modern Germany. This he did in a small book entitled *Der deutsche Chauvinismus* first published in 1913 and republished in 1917.

Die Gestaltung des Völkerrechts nach dem Weltkrieg is certainly deserving of the most careful consideration. It was originally intended to form the closing chapter of a larger work on international law during the present war. But, owing to the great interest in the subject at this time, the author wisely decided to publish this part as a separate volume.

It deals particularly with the international law problems of the future which have arisen as a consequence of the present gigantic struggle. The most important of these problems, as Nippold sees them, are related to the fundamental principles which should govern the future development of international law.

In the first place, Nippold makes a distinction between international law proper and the law of war (*Kriegsrecht*) which must be regarded as very questionable. The latter is governed by the law of military necessity and must therefore be regarded as a negation of law which is not subject to regulation by juridical rules. "Render unto war that which belongs to war, and unto international law that which belongs to international law."

That such a liberal and enlightened mind as Nippold's should take this position furnishes a sad illustration of the harm to the human spirit done by Germany through her methods of conducting this war. To take this position means, of course, a surrender to the German point of view; and its acceptance would involve the triumph of the ideas voiced by Clausewitz and his school. It would imply a complete break with the historical development of international law in the past, and an abandonment of many centuries of effort to set bounds to the

application of force on the part of those in control of a powerful military machine. That the main military machine in existence in the dim and distant future may be the product of a world or international organization and be directed by those in control of a so-called League of Nations only increases the menace of such potential power.

However, with our author's belief that the conception of a purely military war is impossible and that, in the future perhaps even more than in the past, belligerents must needs resort to commercial as well as military means and methods of warfare, we have no quarrel. Nor do we disagree with the view that the first condition for future improvement is to get rid of the "military mentality" as well as the military system which possesses modern Germany.

In his discussion of the new postulates for the future improvement of international law proper (or what we have been wont to call the law of peace), Nippold emphasizes as of first importance the development of procedure for the settlement of international disputes. This we believe to be sound doctrine, though we should not forget that there is something which is of even greater importance, namely, the prevention of international controversies by the establishment of justice in international dealings and the discovery and removal of the many deep and often complex causes of modern war, whether these be racial, psychological, economic, or political in their nature. Such problems lie, however, beyond the province of international law proper or of the international jurist as such, and must be left mainly in the hands of statesmen, politicians, journalists, and diplomatists.

It is interesting to note that Nippold has substantially changed his former views with regard to the future improvement in procedure for the settlement of international disputes. Whereas he, in common with most authorities on the subject, had apparently believed in the rule of unanimity or quasi-unanimity in international conferences, he now seems to favor the principle of majority rule in international as in ordinary political relations.

Our author has also become an advocate of the idea of a League of Nations and is now convinced of the necessity of real sanctions or guarantees to secure the actual observance of international regulations. He sees the inadequacy of mere paper pledges or so-called moral guarantees. However, he would not restrict the enforcement of these sanctions or guarantees to mere military methods. He justly characterizes that mentality which sees nothing but military means or methods as nothing

less than pathological. Among the nonmilitary methods which he especially recommends are those of reprisals (in the forms of embargo and pacific blockade) and the economic boycott.

More than one-third (or about one hundred pages) of this important volume consists of an appendix which includes various projects for world organization or the future basis of international law, such as the Declaration of the Rights and Duties of Nations adopted by the American Institute of International Law, the American Project for a League of Peace, the French Project of a League of the Rights of Man, etc., etc.

AMOS S. HERSHEY.

Early Diplomatic Relations between the United States and Japan: 1853-1865. By Payson Jackson Treat, Ph.D. Baltimore: The Johns Hopkins Press. 1917. pp. viii, 459.

This volume contains the Albert Shaw Lectures on Diplomatic History at Johns Hopkins University for the year 1917. Dr. Treat has selected one of the most interesting periods in the history of American relations with Japan and has treated it in a very painstaking and withal attractive manner, with the result that we are given in a little more than four hundred pages an accurate account of the work of Commodore Perry and Townsend Harris in opening the Empire of Japan to western intercourse, and a clear insight into the political condition of Japan during the eventful years reviewed. The author shows a sympathetic understanding of the difficult position in which the Shogunate was placed, harassed as that government was by the intrigues of jealous daimios at home and pressed by the unyielding demands of American and European Powers.

It is just fifty years since the Shogunate was abolished and the Mikado restored to actual control of the empire. It was in November, 1867, that the Shogun announced his resignation, and in January, 1868, that his enemies succeeded in having the office of Shogun abolished and a provisional government inaugurated. This movement led to civil war, but the struggle was brief and within a few months the direct rule of the Emperor was reestablished.

It would be a serious mistake, however, to assume, as some hasty writers appear to have done, that the Shogun was disloyal to the Em-

peror or that he usurped the authority of the Emperor in negotiating the treaties with Perry and Harris.

The Shogunate had existed since 1192 A.D. and had been for nearly seven hundred years in full control of the administration of the government. As Dr. Treat says: "The authority of the Mikado was nominal, though present. He invested the Shogun with his office, but the Shogun was not called upon to secure approval for his actions" (p. 5). The Shogun, therefore, was fully empowered to negotiate the treaties and was under no obligation to obtain the imperial approval before signing them. It is proof of its decline and weakness that the negotiation of the treaty with Perry was referred to the Mikado.

Dr. Treat points out that it was the Shogun, Iemitsu, who, without imperial approval, took "the momentous decision to close the country" (p. 5) to foreign intercourse. It was, therefore, quite within the power of his successor to rescind that action and bring the empire once more into relations with the western world. Gubbins appears to be entirely correct in believing that the first weakening of the Tokugawa authority was seen in the Shogun's referring Perry's request to Kyoto instead of taking the decision himself. Had he taken the latter course, Gubbins says, "the nation, it is generally held, would have accepted the decision without a murmur, the Shogun's authority being ample to meet the case."¹ "This decision," he adds, "must have been in favour of the opening of the country for the simple reason that Japan was not prepared for war."²

This relegation of the real Emperor to seclusion and the exercise of his authority by a minister, the Shogun, or, as Perry knew him, the Tycoon, was simply an extreme development of the Chinese practice, or perhaps one should say an oriental practice, which was and is seen all over Asia. It is not merely the Emperor or chief ruler who is thus left to the enjoyment of an empty honor, devoid of all real power, but even subordinate officers are often in like manner but figureheads in their respective offices, the authority being exercised by secretaries and clerks. Even in western countries, however, we are not wholly unaccustomed to the figurehead monarch who reigns but does not rule.

Dr. Treat perhaps stresses too much the signing of the treaty of 1858 before the sanction of the Emperor had been obtained. Dr.

¹ The Progress of Japan, by J. H. Gubbins, C.M.G. Oxford, Clarendon Press, 1911, p. 90.

² *Ibid.*, p. 91.

Treat says truly that in doing so the Regent, Lord Ii, did so "out of no disrespect for the Throne." The fact is that in signing the treaty before obtaining the sanction of the Mikado, the Shogunate was merely following an age-old custom. As a mere formality the Shogun was accustomed to report such actions to Kyoto, but was not accustomed to seek approval before action. Had it not been for the precedent established in a moment of weakness in 1853 by the reference to Kyoto of the requests of Perry, no attempt would have been made to compel the Shogun to obtain the sanction of the Throne before signature of the treaty of 1858 and approval after signature would have come without discussion.

As it was, the enemies of the Shogun, even before Perry's arrival, had been scheming for his overthrow and were alert to take advantage of any incident that would enable them to weaken his authority. The chapter in which this subject is discussed, Chapter IV, is devoted to a consideration of "the effect upon the foreign policy of the Shogunate of the political situation within the empire." This, of course, is the natural statement of the question as seen by the American or European, but to the Japanese it would appear rather as the effect of the foreign policy of the Shogunate upon the political situation within the empire. Viewed from this angle, it is seen at once that the contending parties were much less interested in the treatment of the foreigner than in defeating one another. The court at Kyoto was not anti-foreign and many of the daimios arrayed on the side of the court, although nominally opposing the Shogunate's foreign policy, did so merely because they desired to embarrass him and were really not opposed to the opening of the country to foreign intercourse. This was true of the Prince of Choshu, whose forts in Shimonoseki Straits fired upon the U.S.S. *Wyoming* and other foreign vessels in the summer of 1863. He protested afterwards to the British Admiral that he was but carrying out imperial orders; that originally he had had no objection himself to foreign intercourse. Later he expressed a desire for more intimate relations (pp. 343 and 359). The Satsuma Clan, too, was decidedly in favor of opening the country, yet it united with Choshu to overthrow the Shogun. On the other hand, the most bitter opposition to foreign intercourse came from the family of the Shogun himself, i.e. from the Prince of Mito, a member of the Tokugawa Clan. Domestic politics, in other words, entirely overshadowed questions of foreign relations. These facts make it easy to understand how it was

that after the Shogunate had been defeated, the victors became at once the advocates of foreign intercourse.

The act of the Shogunate in signing the treaty of 1858 before obtaining the sanction of the Throne had importance only because of its bearing upon the domestic situation. Both sides were intriguing for possession of the Mikado, and when a little later the Shogun triumphed for a brief time over his enemies by obtaining the favor of the Emperor, he nominally accepted the anti-foreign decrees, but in reality he ignored them and seized the opportunity to punish with imprisonment and decapitation many of the leaders of the opposition, that is to say, the very men who were nominally anti-foreign but in reality anti-Shogun.

Dr. Treat notes the injustice to Japan done by the early commercial treaties in depriving Japan of tariff autonomy, and particularly in requiring the free export of gold and silver coins. Japan had adopted a mistaken ratio between the two metals which enabled the unscrupulous foreigner to buy with foreign silver coins enormous quantities of gold at much less than their real value. The results were so serious that in 1859 the government ordered the sale of gold coins to foreigners to cease. Although each person had been limited to five thousand dollars worth in any one day, demands were made for enormous quantities. One person asked for four million dollars worth, another for two hundred fifty millions at one time.

Japan's bitter experience under these treaties, which deprived her until 1894 of control of her own tariff, ought to lead that government to sympathize with the present efforts of China to obtain a revision of the treaty tariff in force in that country which, while nominally 5 per cent *ad valorem*, in fact averages perhaps not more than $3\frac{1}{2}$ per cent.

It is difficult to realize that in less than half a century feudal Japan was transformed into a great modern Power, a constitutional monarchy, a military and naval Power of the first rank, an industrial state whose forges and factories rival those of the west, and a commercial Power whose merchant fleets are found in all the seven seas.

The visit of Perry was only one of the causes contributing to this change. It did not cause the overthrow of the Shogunate, but it hastened it, and the fall of the Shogunate led logically to the abolition of feudalism.

Dr. Treat does not deal specifically with this topic, for his narrative stops with the imperial sanction in 1865 of the commercial treaties

of 1858, and feudalism was not abolished until 1871. The latter date, however, more properly marks the transition from the feudal to the modern period.

Dr. Treat deserves our thanks for a valuable contribution to the history of the period during which this transformation occurred. The volume is well indexed and an appendix contains a very complete bibliography. The typography and the binding are a credit to the publishers.

E. T. WILLIAMS.

Los Estados Unidos de América y las Repúblicas hispanoamericanas de 1810 a 1830. By Francisco José Urrutia. [Biblioteca de Historia Nacional, volumen XX.] Bogotá: Imprenta Nacional. 1917. pp. xii, 423.

Dr. Urrutia is a member of the National Academy of History and of the American Institute of International Law, and author of several other books of value to students of international law and diplomatic history. Between the title of the volume as given above and the name of the series at the top of the title page are the words *Páginas de Historia Diplomática*. So far as the period between 1810 and 1822 is concerned, the title given above, the most nearly descriptive of the three, is fairly accurate. But after 1822 the volume is devoted almost wholly to Great Colombia. There is comparatively little other than Colombian material later than 1817. The editor states that through the special favor of Secretary Lansing he had been permitted to use the manuscripts in the Department of State in Washington. In addition to the documents copied there, he says he has taken others from the diplomatic archives of Colombia, and to complete the documentation of the first part he adds that he has copied a few from the printed collections of Cadena and O'Leary. For his illuminating historical introductions he has drawn from several secondary authorities, some in English and some in Spanish, quoting frequently and extensively, and citing his authorities.

The first sheaf of documents, seven in number, illustrates the Venezuelan mission to the United States in 1811 and 1812 intrusted to Juan Vicente Bolívar, Orea, and Revenga. The second, of three documents, deals with contemporaneous New Granadan missions. The next

group, of nine documents, comprises various communications from several Spanish American Governments to that of the United States between 1811 and 1819. Then follow two documents concerning Aguirre's mission in 1817 representing both Argentina and Chile; and then come two announcing a projected Venezuelan mission in the same year. The following eleven documents elucidate the plans of the Venezuelan, Clemente, and his associate, Pasos, for taking forcible possession of the Floridas in the name of the new governments in 1817 and 1818, and shows how they were frustrated by the acts of the United States Government. The next, by far the largest bundle of documents, twenty-two in number, deals with the mission conferred on Manuel Torres (who had long been a resident of the United States) as the representative of Great Colombia from 1819 to 1822, culminating in his official reception at Washington, which was the first formal recognition by that government of any Latin American nation.

The foregoing, with their historical introductions, constitute Part One of the volume and occupy about one half of it. Part Two, covering only about forty pages, reviews the steps leading to the act of formal recognition by the United States, including the often printed recognition message of March 8, 1822, the report of the House of Representatives Foreign Relations Committee on it, the protest of the Spanish Minister against it, and the reply of Secretary Adams.

Part Three, covering the rest of the volume, bears the subtitle, "The First Diplomatic Missions of the United States to the Latin American Republics." But after a brief résumé quoted from W. S. Robertson's *First Legations of the United States in Latin America* and properly accredited to it, this part is devoted entirely to Great Colombia. There are three full documents, and brief résumés of various others, arising out of the mission of Charles S. Todd in 1820. Then follow six documents, and résumés of several other communications, belonging to the mission of Richard C. Anderson, who was at Bogotá from 1824 to 1826 and negotiated the first treaty between the United States and Colombia, which served as a model for many others with other Powers. Next come four documents written during the year 1827 when B. J. Watts was chargé. Eleven documents bear on the very interesting mission of (the later President) William Henry Harrison in 1829, whose hostility to the monarchical tendencies of Bolivar gave rise to much criticism of him and to a belief that he was endeavoring to further the interests of his country at the expense of Colombia,

as Poinsett was charged with trying to do at the same time in Mexico, and led to his early recall. The last group, of twelve documents, running from late in 1829 to the beginning of 1831, belong to the mission of Patrick Moore.

Covering the entire history of the relations between the United States and Great Colombia, and being in a field where comparatively little has been published and where much remains to be published, this collection is not only very interesting but very valuable as well, even though it does fall far short of being all that its title leads one to expect. If the work could have been made large enough to include the full text of all documents mentioned, it would have been much more valuable. But that would probably have required more than a single volume. It would take many volumes to include all of the documents legitimately comprehended by its title. Of the documents merely outlined, some are contained in American State Papers, Foreign Relations; but most of them are not. Of those printed in full some appear in English in the same publication. In some cases citation is made to the published documents. In other cases no citation appears. Several of the documents are also contained in other books, chiefly in Spanish, mentioned in the footnotes.

Unfortunately many errors due to insufficient care in transcribing or proofreading, or both, mar an otherwise creditable and useful book. For example, on page 301 is mentioned a note of December 20, 1822, for which citation is made to American State Papers, Foreign Relations, IV, 851. The year should be 1825, and the volume, V. Many other errors in dates and references occur. On page 76, and in some other places, David C. de Forest appears as David C. Foster; on page 306 John Quincy Adams is disguised as John A. Adams; and on page 281 Iturbide parades under the alias, Ilubirde.

WM. R. MANNING.

Treaty Ports in China (A Study in Diplomacy). By En-Sai Tai, Ph.D.
New York: Columbia University Press. 1918. pp. x, 202.

Under the direction and guidance of Professor John Bassett Moore, Chinese students at Columbia University have produced in recent years a number of highly valuable monographs on subjects relating to diplomatic and legal questions wherein China is the principal state concerned. The latest of this group is *Treaty Ports in China*.

Doctor Tai in his preface distinguishes "treaty ports" from the three other types of commercial ports in China. He then proceeds with an account of the position of aliens in China in pre-treaty-port times, which introduces the body of the thesis, an historical account of the opening of the treaty ports and their development.

The book contains a certain amount of material which is irrelevant or a repetition of accounts which have appeared elsewhere in connection with other subjects. If there was reason to include an account of the Whampoo Conservancy, there should also be an account of the Peiho Conservancy; and in connection with both there might be mention of the import duty surtax imposed at the ports benefited by these conservancy undertakings as a contribution to their maintenance. The statement in the preface that "the boundaries and the foreign jurisdiction in these (treaty) ports are also defined by the diplomatic documents" needs qualification, as is shown by instances which the author cites of controversies as to the limits of a "port." Attempt was made in the Treaty of Chefoo of 1876, Article III, subsection ii, to provide for delimiting the boundaries of treaty ports, but, although arbitrary decisions have been rendered from time to time, this problem has never to this day been fully and conclusively dealt with either by diplomatic negotiations or by the determination of the Chinese Government.

The author has made exceedingly good use of American, British, and French documentary sources; but there is no reference at any point to a strictly Chinese source. Studies of this type should in every case be given an index, especially when no page numbers appear with the table of contents.

The particular value of Doctor Tai's monograph to students of international law, to diplomatists, and to residents in China may be found in the concise treatment of the rights of foreigners in treaty ports, the description of the municipal administrations and of foreign jurisdiction, and the accounts of various incidents and developments in very recent years, such as the attempt to extend the Shanghai Settlements and the French Concession at Tientsin. Especially gratifying to the American student is the proportion of attention given to American-Chinese relations.

Following a well-wrought narrative chapter on Foreign Jurisdiction in the Treaty Ports, Doctor Tai makes the substance of his concluding chapter a plea for the relinquishing of extraterritorial jurisdiction. Is

it optimism, is it diplomacy, or is it prophetic foresight that prompts him to the assertion, "With Japan as a successful model, China's chance of success in inducing the Powers to relinquish their foreign jurisdiction is exceedingly great"? (p. 198).

STANLEY K. HORNBECK.

PERIODICAL LITERATURE OF INTERNATIONAL LAW

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KATHRYN SELLERS.

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CHANGE OF SOVEREIGNTY AND CONCESSIONS

I. GENERAL PRINCIPLES

THE principle of international law as announced by Chief Justice Marshall in the famous *Percheman Case*¹ and supported by a long list of American decisions is that no confiscation of private property in land results from a mere change of sovereignty. Will this principle be sufficient and adequate to protect private property rights in concessions and contracts? In other words, since contracts no less than land may constitute valuable and irreplaceable private property, should any distinction be made, in the application of the *Percheman* principle, between land and contracts?

Where the parties to the contracts are private persons or corporations there seems to be no essential distinction between property in the form of land and property in the form of contracts. In either case the change of sovereignty must, of itself, effect no forfeiture; where, for instance, territory passes out of the sovereignty of State X and under the sovereignty of State Y, just as State Y must not allow the change of sovereignty to affect the ownership of land held by a private individual, A, within the ceded territory, so State Y must not allow it to affect the ownership of contract rights, held by A against some private obligor or debtor, B.²

¹ 7 Peters, 51. In the course of his opinion Chief Justice Marshall said: "It is very unusual, even in cases of conquest, for the conqueror to do more than to displace the sovereign and assume dominion over the country. The modern usage of nations, which has become law, would be violated . . . if private property should be generally confiscated, and private rights annulled. The people change their allegiance; . . . but their relations to each other, and their rights of property, remain undisturbed. . . . A cession of territory is never understood to be a cession of the property belonging to its inhabitants. . . . The cession of a territory by its name from one sovereign to another . . . would be necessarily understood to pass the sovereignty only, and not to interfere with private property."

² Where the law in State X differs from that in State Y, State Y must enforce those contracts which are valid by X law.

But where the obligor or debtor under the contract is not a private person or corporation but the state itself, quite a different question arises. If, in the example above, B, the obligor, is not a private individual or corporation, but State X itself, although unquestionably State Y is bound not to allow the change of sovereignty to destroy A's contract rights, will State Y succeed to the former obligation of State X upon the contract itself? Granting that State Y succeeds to the position of State X as the enforcing power which gives to all contracts their value, does it also succeed to the position of State X as the obligor or debtor under the contract? May not the ceding state, the original party to the contract, still remain bound upon it? Here lies a question of true succession; and this question cannot be solved by the principle of the Percheman rule. For the Percheman rule merely says that private property upon change of sovereignty shall not be confiscated; but there is no confiscation if *either* the ceding or the receiving state remains bound by the concession; the Percheman rule, therefore, is of no value in determining which one of the two shall be bound. For instance, the Percheman rule would be of little help in the case where a public deposit of money, required by State X from all those doing business within a certain district, is retained by State X after the cession of the district to State Y. After the cession it is clear that State Y cannot be held liable for the return of the deposit upon the theory that international law protects private contract rights from confiscation upon a change of sovereignty.⁸ There is no confiscation, because State X still remains liable in theory, whether, as a practical matter, it is possible to collect from State X or not. Some principle other than that of the Percheman Case must therefore be resorted

⁸ See Chas. E. Magoon: *The Law of Civil Government in Occupied Territory*; Reports submitted to the U. S. Secy. of War (3d ed), 1903, p. 484. Before the cession of Porto Rico to the United States the Board of Harbor Works of Ponce, Porto Rico, had made a deposit, required as security, of 27,503.06 pesos with the Spanish collector of customs, and this the collector of customs had apparently refused to return when Porto Rico was ceded to the United States. Mr. Magoon advised that the United States was not bound to make any compensation, but that the United States should support the claim of the Harbor Board against the Government of Spain for the amount in question.

to in order to ascertain whether or not the receiving state does succeed to the liability incurred by the ceding state through the grant of concessions and franchises.

It must be confessed that judges and writers do not always make a clear distinction between these two quite different principles in the law of succession; there is evident a tendency to apply to all cases alike the comprehensive principle of the *Percheman Case*; to examine whether any given concession or contract constitutes "property" or not, and, if it can be said to fall within the undefined category of "property," to decide that therefore it cannot be confiscated, and hence the receiving state must succeed to the obligation of the contract.⁴ The difficulty with this mode of reasoning is that, even were it logically sound, it rests the whole case upon the determination of what constitutes "property"; and the definition of property is a will-o'-the-wisp which is all but impossible to attain. For half a century the courts have been struggling to define the meaning of property under the Fourteenth Amendment to the Constitution of the United States; if it has been found impossible during that time to reach a common national understanding, sufficiently precise to decide all cases arising under this amendment, is it likely that municipal courts would agree upon any exact understanding of international validity? The truth is, not that promises will be enforced if they constitute "property," but rather that promises constitute property if they can be enforced.⁵

⁴ Innumerable examples of this commonly adopted viewpoint might be cited. In speaking of concessions granting the exclusive right to lay cables, the United States Attorney General, in an opinion rendered on June 15, 1899, said:

"Concessions of this kind, which carry with them exclusive rights for a period of years, constitute property of which the concessionary can no more be deprived arbitrarily and without lawful reason than it can be deprived of its personal tangible assets." (22 Op. 518.)

For a still better example, see the case of *Sanchez v. United States* (216 U. S. 167).

⁵ Many obligations, even though they clearly constitute property, cannot be enforced against the receiving state, as, for instance, in the *Ponce Harbor Works* case, cited in note 3.

II. THE GENERAL RULE AS TO CONCESSIONS

If, then, the Percheman rule, or, in other words, the "property test," is not adequate for determining the effect of a change of sovereignty upon concessions and contracts where the state itself is obligated under the contract, what is the general principle upon which these cases must be decided?

Some writers would have it that the receiving state succeeds to *none* of the burdens and contract obligations undertaken by the ceding state.⁶ The great majority of cases, however, do not lend support to this contention, which seems also to be out of keeping with the modern trend of international law, with general principles of fairness and equity, and with considerations of international expediency.

In the days of Rome, war was considered as a legitimate method by which a state might replenish its own coffers; the captives of the Roman army were sold into slavery, and all captured immovables, not hitherto owned by Roman citizens, became the property of the Roman state. In those days there was no such thing as protection of enemy private property from confiscation. Since then our civilization has progressed; unless the German arms prove victorious, we have abandoned the idea that the citizens of a conquered state are the legitimate prey of the victor state for its self-enrichment. The whole trend of modern international law is consistently to protect the

⁶ See, for instance, Keith, *Theory of State Succession*, pp. 5, 6.

"The authorities are very much divided as to the meaning and propriety of the phrase 'succession of States.' Several (*e.g.*, Gareis, Par. 16, pp. 59 ff., and Zorn, 32, 77) even deny that it ever takes place, and one (Liszt, Par. 23) only admits it in a few cases. Others maintain that it is a pure fiction or metaphor, whether useful or otherwise. But the majority accept the doctrine of succession either in pure or modified form. . . .

"Among the publicists who evidently consider the phrase 'succession of States' a mere fiction or metaphor are Appleton, Gabba, and Gidel, who have produced valuable monographs on this important subject. But Hüfer, the most important of them all, does not hesitate to use the phrase 'Staaten succession' as the title of his remarkable work. It must be admitted that these monographs are, for the most part, highly abstract and theoretical, and that their conclusions are often at variance with international practice." (Hershey's *Essentials of International Public Law*, p. 141, note 27.)

individual citizens of a conquered state from injuries to their persons, their property, or their rights, as far as military considerations will permit.

Furthermore, general considerations of fairness and equity do not accord with the view that no obligations pass to the receiving state. Where, for instance, a corporation has in good faith spent of its substance for the construction of a railway for the exclusive benefit of the territory later ceded, expecting its return under concessions granted it in consideration thereof, it would seem neither fair nor equitable that the new sovereign should be allowed to retain the benefit of the railway and avoid any liability for its cost. One of the fundamental principles underlying all equity is that the benefit shall not pass without the burden.

In the third place, considerations of international expediency would seem to require the adoption of some clear principle of state succession to obligations. After cession or conquest, the territory ceded becomes a part of the receiving state; and it is to its vital interest that its rule be characterized by the generosity which stimulates contentment rather than the severity which breeds hate. Since the commercial prosperity and industrial fabric of the ceded territory henceforth will go to make up part of the national existence of the receiving state merely enlightened self-interest would suggest that such a rule of succession be adopted as would result in the minimum disturbance of business and commercial life. The injury caused to business by lack of protection of corporate or private property is by no means confined to the intrinsic worth of the property confiscated; the real injury lies in the depression and disarrangement of the whole commercial and economic fabric through uncertainty and apprehension. A rule of international law to the effect that no obligations pass to the receiving state would therefore seem out of keeping with the needs of the modern industrial world, and with the desire and common interest of all nations to build up international credit so that state obligations will be given a maximum valuation.

In view of these considerations, there seems sound reason behind the rule that the receiving state does succeed under international law to certain of the ceding state's obligations,—a rule which is supported

by the majority of courts and the great weight of authority of text writers. As to how far this principle is to be carried, however, one finds a wide difference of opinion.⁷

The principle was announced in general terms as early as 1812 by Mr. Adams, the United States Secretary of State, who wrote: "The conqueror who reduces a nation to his subjection receives it subject to all its engagements and duties towards others, the fulfillment of which then becomes his own duty. However frequent the instances of departure from this principle may be in point of fact, it cannot, with any color of reason, be contested on the ground of right." (1 Wharton, 19.)

Subject to a number of important exceptions, which will be considered later, the general principle which the United States has followed on various occasions has been that where the concession is clearly related to the territory ceded, and granted purely for its benefit, the receiving state succeeds to the obligations as well as to the rights of the ceding state.⁸

Following the Spanish American War in 1898 the question concerning concessions and franchises granted by the Spanish Government prior to 1898 was frequently raised. For instance, during the United States military occupation of Cuba, the United States War Department was called upon to determine whether to respect, as binding upon the United States, a concession to construct a canal along the Matadero River in Cuba, which had been granted in due course by the Spanish authorities before the signing of the definitive

⁷ In the determination of this difficult question, which will be of unusual importance in the years following the coming European settlement, an examination of actual practice will be of far more value than a mere philosophical and theoretical discussion of general principles. Theories of succession have differed so widely that little is gained from collecting the theoretical views of text-writers; for this reason an examination will be made of decisions and opinions as they have occurred in actual practice. The United States judicial and administrative decisions have been chosen for this examination because of the comparative frequency with which questions of succession have arisen for official settlement within the United States.

⁸ It seems hardly necessary to cite cases to show that the benefit passes with the burden, i.e., where states succeed to the obligation of a concession, they likewise succeed to the rights and benefits to which the ceding state was entitled under the concession.

peace treaty with Spain. The War Department held that the concession was binding upon the United States.⁹ This decision rested upon the carefully considered opinion of Mr. Charles E. Magoon, the able law officer of the Bureau of Insular Affairs, who held office during the period following the Spanish American War, and whose official reports to Mr. Elihu Root, the Secretary of War, contain admirable discussions of many phases of the problem of succession.

In an opinion rendered on July 10, 1899, Mr. John W. Griggs, the United States Attorney General, considered the case of a concession to construct certain tramways in the city of Havana, Cuba, granted in due course by the Spanish authorities before the American occupation of the island. The Attorney General held that such a concession was binding upon the sovereign which succeeded Spain; and hence he advised that the Secretary of War, in command of the forces in occupation of Cuba, should not without adequate cause prevent the owners of the concession from proceeding with the construction of the tramway.¹⁰

Similarly, the Attorney General held that if Spain prior to 1898 had granted to a private company the exclusive right to lay cables to Cuba, the concession would be binding upon the United States Government, and would bar the latter from granting similar privileges to other companies.¹¹

⁹ See Magoon's Reports, pp. 571, 579.

The concession was held to be binding upon the United States even though the final decree granting the concession was not signed by the Spanish Governor General until Sept. 28, 1898, a month and a half after the signing of the peace protocol (Aug. 12, 1898), and at a time when Spain was making arrangements to withdraw from the island. No question of bad faith on the part of the Spanish authorities decreeing this concession was, however, suggested. Had the final decree granting the concession been granted after the signing of the definitive peace treaty on Dec. 10, 1898, another question would have been raised. The action of the United States War Department, of course, did not prevent the question of the validity of the grant under the Spanish law being raised in the Cuban courts.

¹⁰ 22 Op. 520.

¹¹ In an opinion rendered on June 15, 1899, the United States Attorney General said:

"If, therefore, the Western Union Telegraph Company has an exclusive grant applicable to Cuba for cable rights, which grant has not expired, it would

III. CONCESSIONS, TO BIND THE RECEIVING STATE, MUST BE FOR BENEFIT OF LOCUS CEDED

That a concession may be binding upon the receiving state, it is not sufficient merely that it be related or attached to the territory ceded. As has already been suggested, it must also have been granted for its sole benefit.¹² If the concession relate to an enterprise, undertaken for the imperial or national benefit of the ceding state rather than for the local benefit of the territory ceded, the receiving state may refuse liability upon the obligation.¹³

In the Manila Railway Company cases, the Manila Railway, a British corporation, had agreed to build a railway in the Philippine Islands, and had been granted by the Spanish Government a concession for that purpose, by the terms of which Spain agreed to guarantee eight per cent annual interest on the capital employed in the construction of the railway. After the Spanish War, the British corporation, through the British Ambassador at Washington, sought to secure from the United States Government the guarantee of the eight per cent annual interest.¹⁴ The Attorney General, to whom the

be violative of all principles of justice to destroy its exclusive right by granting competing privileges to another company." (22 Op. 518.) This opinion was quoted by Mr. Magoon and followed by the United States War Department in its action regarding the Cuba Submarine Cable Co. (Magoon's Reports, pp. 281, *et seq.*)

¹² Enforceable state promises to convey definitely specified land situated within the ceded territory, where all the necessary conditions have been performed by the grantee, are exceptions not dealt with in this paper, since these cases are treated by the courts as involving perfected interests in land, *i.e.*, equitable rights *in rem*, to which title has already passed, rather than as concessions or contracts. See article on "Change of Sovereignty and Private Ownership of Land," this JOURNAL, July, 1918, p. 475.

¹³ "Nor should we," says Attorney General Griggs in 23 Op. 192, "in inquiring whether the nations have consented to a rule of law to the effect that contracts made by the old sovereignty for local and imperial objects shall be obligatory as such upon the new sovereignty, forget the extraordinary effects which must flow from such a law. What is there that may not be contracted for? What imaginable stipulations may not be made?"

¹⁴ Mr. Magoon, to whom the case was first referred for decision, seems to have felt that the payment of \$20,000,000 by the United States to Spain relieved the United States Government of any liability for obligations undertaken by

case was referred for an official opinion, stated that, as a general rule, if obligations are created for the benefit of the *locus ceded*, they become binding upon the receiving state. He says:

It seems to be the consensus of opinion among authorities on international law that, upon the separation of part of a country from the sovereignty over it, debts created for the benefit of the departing portion of the country go with it as charges upon its government. (Hall's *International Law* (4th ed.), p. 98; Rivier, *Droit des Gens*, tome 1, pp. 70, 72; Calvo, *Le Droit Inter.* t. 1, sec. 101; t. 4, sec. 2487; Phillimore's *Inter. Law* (2d ed.), vol. 1, pt. 2, secs. 136, 137; *The Tarquin*, Moore on Arbitration, Vol. 5, p. 4617; Lawrence's *Wheaton's Inter. Law*, pp. 53, 54; Wharton's *International Law Digest*, sec. 5; *Anglo-Saxon Review*, June, 1899, Mr. Reed's article concerning the Philippine debt, etc.; Dana's *Wheaton's Inter. Law*, sec. 30, note; Glenn's *International Law*, sec. 28; Field's *International Code*, secs. 24, 26; Gardner's *Institutes of Inter. Law*, p. 52; Senate Doc. 62, Fifty-fifth Congress, third session, pt. 1, p. 500).¹⁵

Upon an examination of the facts of the Manila Railway case, however, he found that the building of the railway was, as a matter of fact, not exclusively for the benefit of the Philippine Islands, but that the project was also entered into for Spanish imperial purposes, particularly for defense and imperial military operations. He therefore held that the United States Government was not, as a matter of strict law, legally bound by the concession.¹⁶ Whether or not the Attorney General was correct in his finding of fact, the legal principle upon which he based his decision would seem to be sound.

But although the Attorney General found, as a matter of fact, that the concession was granted by the Spanish Government not to secure solely local benefits, yet he held that inasmuch as "the provinces of the Philippines have undoubtedly received and they retain and will retain, the chief benefit from the railroad" the United States was "equitably" bound to assume the obligation, presumably on the theory of unjust enrichment. He also found that the Spanish

Spain for the benefit of the Philippines. But it is difficult to see how the United States could discharge its international obligations to third parties by the payment of any amount of money to Spain. (See Magoon's Reports, p. 177.)

¹⁵ 23 Op. 187.

¹⁶ *Ibid.*, p. 181.

Government before the cession had charged two-thirds of the obligation upon the local revenues of the Philippine Islands; and he therefore held that, inasmuch as the islands received the main part of the benefit, they were "equitably" bound to guarantee two-thirds of the interest; United States officials would therefore be entitled even without authority from Congress to satisfy this "equitable" obligation out of the Philippine treasury.¹⁷ Although, since Continental Law knows of no equitable obligation which is not enforceable legally, it may be questioned whether the term "equitable obligation" is a happy one to introduce into international law, yet the theory of unjust enrichment has a real place in this subject, and should not be lost sight of. Where, for instance, as in the Manila Railway case, a concession has been granted for imperial and not for local benefit, if the *locus ceded* does, as a matter of fact, receive an actual benefit, courts may upon this theory require the receiving state to pay to the holder of a cancelled concession a proper compensation, even though according to general principles, the concession would not be binding upon the receiving state. In this event, the amount of the compensation will be determined, not by the payments called for in the concession nor by the value of the concession itself, but by the actual value of the benefit received by the *locus ceded*.¹⁸

The "Cable cases" which arose at the end of the Spanish War present another illustration of the same principle. Prior to 1898 the Spanish Government had granted concessions and subsidies to certain English cable companies. After Spain had relinquished her sovereignty over Cuba and the Philippines, the British Ambassador presented a claim on behalf of the cable companies against the United States Government for annual subsidies which had been promised them by the Government of Spain. The contention of the British

¹⁷ The Attorney General further held that the payment by the United States to the British concessionary of the remaining one-third would be a payment rather of grace than of legal right, which could not therefore be made without express authority from Congress.

¹⁸ The final disposition of the Manila Railway case was reached by an amicable settlement between the railway company and the United States War Department, in which a private arrangement was concluded satisfactory to both. (See 1 Moore's Digest, 406.)

Ambassador in pressing this claim was that the burden of all concessions whatsoever which relate to the ceded territory passes to the receiving state. The question therefore whether the receiving state is bound by *all* concessions which relate to the ceded territory, or only by those which were granted for the benefit of the ceded territory, was squarely presented. The United States, in its reply to the British Ambassador, adhered to the latter view. As in the Manila Railway case, Attorney General Griggs, upon whose opinion the United States State Department based its reply, held that the concession would not be binding upon the United States unless the cables were for the sole benefit of the islands ceded. He further held that, as a matter of fact, the benefit of the cables in question did not inure solely to the territory ceded, but that the concessions were made by Spain for imperial and military purposes, as well as for local benefit; and hence that the United States was not in strict law bound upon the concessions. Because, however, a large part of the benefit of the Philippine cables actually adhered to the islands themselves, he held that the islands were under an "equitable" obligation to pay the same annual subsidies to the cable companies with which their treasuries had been charged by the Spanish Government.¹⁹

In an opinion delivered on June 14, 1901, Attorney General P. C. Knox, who succeeded Mr. Griggs, affirmed Mr. Griggs' decisions in both the Manila Railway case and the Cables cases.²⁰ "I am not aware," says the Attorney General, "of any principle of international law, concerning the transfer of obligations entered into as considerations for 'works of local improvement' which precludes an inquiry into the question whether a given work situated in a locality—as all physical things must be—is a 'work of local improvement.'"²¹

¹⁹ 23 Op. 197.

²⁰ *Ibid.*, 451.

²¹ The subsequent history of the Cables company case was not satisfactory from the judicial viewpoint. The matter came up for consideration by the Attorney General of the Philippine Islands; in opinions rendered on January 14, 1902, and January 17, 1902, Mr. Wilfley, the Attorney General, held that the United States succeeded to Spain's obligation to pay to the Cables company an annual subsidy of 4,500 pounds, and similarly succeeded to the corresponding benefits of priority in transmission of messages, half rate privileges of trans-

The principle that concessions bind the receiving state when granted for the sole benefit of the *locus* ceded, but not otherwise, seems therefore to be supported by precedents drawn from the actual practice of the United States. These precedents seem to establish that if the concession was granted substantially for the benefit of the territory ceded, the receiving state is legally bound. If it was granted substantially for the benefit of the ceding state, the receiving state clearly is not bound. If the benefit adheres partly to one and partly to the other, the receiving state is not bound legally upon the contract or concession; but although it is not bound upon the contract, it may be liable upon the theory of unjust enrichment, or, as the Continental lawyers would say, of "unmerited acquisition of benefits," for the benefit actually received.

These principles were again borne out by the actual decisions in the two much quoted cases of *O'Reilly de Camara v. Brooke*, 209 U. S. 45 (1907), and *Sanchez v. United States*, 216 U. S. 167 (1910), although the language and reasoning of the court in each of these cases followed the "property test" rather than the "benefit test."

In the former case the evidence showed that the Spanish Government in the year 1728 had sold at auction the office of high sheriff of the city of Havana, Cuba,—an office which was declared to be perpetual and hereditary and carried with it the right to a slaughter-house monopoly involving the receipt of an unearned commission upon every animal killed within the city. At the time of the Amer-

mission, and the right to a certain share in the profits. (See 1 Opin. Att. Genl. of Philippine Islands, 62 and 80.) The Cables company subsequently brought a claim against the United States Government in the United States Court of Claims which came up for decision in 1911. The United States moved to dismiss the petition on the ground that the plaintiff's claims arose out of treaty stipulations with a foreign nation and hence were not cognizable by the Court of Claims. The motion to dismiss was overruled, on the ground that the plaintiff's claims rested upon the theory of unjust enrichment or upon general international law (*Australasia and China Tel. Co. v. U. S.* 46 Ct. of Claims, 646). The case was argued upon the defendant's demurrer in the following year. (*Ibid.*, 48 Ct. of Claims, 33.) The court gave judgment for the defendant, but upon the ground that the court had no jurisdiction to try questions arising purely in international law. In view of the *Paquete Habana* decision (175 U. S. 677), some may find it difficult to agree with the holding of the court; but in any event, the decision did not purport to settle the question of international law involved.

ican occupation of Cuba, the plaintiff, who was the legal holder of the office, was ousted by order of General Brooke, the United States Military Governor of Cuba, who issued an order abolishing the office, together with all rights, duties and privileges pertaining thereto. From this the plaintiff appealed to Mr. Root, the Secretary of War, who decided adversely against the claimant.

In refusing to reinstate the claimant in office the Secretary of War, it is believed, acted quite properly; for United States law does not recognize a vested property right in a public office, nor is a military occupant bound to maintain former officials in public offices. Neither could the United States recognize as an inherent privilege incident to the office of high sheriff the right to a slaughter-house monopoly whereby the high sheriff should be legally entitled to receive an unearned commission on every animal slaughtered within the city. No such vested property right could continue under the United States regime, and the Secretary of War very properly refused the claimant's petition for reinstatement in that right.

The plaintiff later brought an action for tort under a special statute in the United States Supreme Court against General Brooke. The court very properly refused to allow damages to the plaintiff for the deprivation of the office, since the act of General Brooke had been his official act, committed in the performance of his public duties, and later ratified by the United States Congress.

Perhaps the most striking aspect of the case was the way in which all concerned sought to apply the Percheman rule, or "property test," i.e., to hold the slaughter-house concession binding upon the receiving state only if it could be said to constitute "property." "I do not think," says Mr. Magoon, to whom the case was first referred, "the Spanish Government contemplated or undertook to convey a property right in and to said office when it sold the privilege of administering it. . . . I think the true theory is that the rights of the complainants were inchoate rights of contract, not vested rights of property." Mr. Root, the Secretary of War, adopted Mr. Magoon's conclusions in disposing of the case and said: "The petitioner has been deprived of no property whatever."²² Finally, the

²² See Magoon's Reports, pp. 204 and 209.

United States Supreme Court added: "We agree with the opinion of the Secretary of War, that the plaintiff had no property that survived the extinction of the sovereignty of Spain."²³

Perhaps no illustration could give more striking evidence of the grave difficulties of the "property test" as applied to concessions. Mr. Magoon, Mr. Root and the United States courts were familiar only with the Anglo-Saxon conception of "property"; apparently no one had called to their attention Article 336 of the Spanish Civil Code (made applicable to Cuba in 1889) which states: "As personal property are also considered rents or pensions, either for life or hereditary, in favor of a person or family, . . . also purchased public offices, contracts for public services," etc.²⁴ In truth, as already suggested, the "property test" is as logically unsound as it is difficult; it furnishes no answer to the real problem of whether the ceding or the receiving state should be bound. Should not the court here have applied the "benefit test," as in the cases previously considered? Should not the deciding factor have been the question for whose benefit the slaughter-house monopoly was granted,—that of Cuba, or that of Spain? The real beneficiary of the transaction was certainly not Cuba, which was saddled with an onerous monopoly for all time without receiving any corresponding benefit. The actual beneficiary was the Spanish Government, which received the sale proceeds of the auctioned monopoly and office. Hence no obligation passed to the United States or to Cuba upon the relinquishment of Spanish sovereignty.

It will be noticed that the form in which the action was brought obviated the necessity of a direct decision upon whether or not the concession was binding upon the United States. Such a question was squarely presented in the later case of *Sanchez v. United States*, 216 U. S. 167 (1910). In this case the plaintiff, a subject of Spain, had purchased in Porto Rico prior to 1898 the purchasable office of

²³ *O'Reilly de Camara v. Brooke*, 209 U. S. 45.

²⁴ It is submitted that if the property test is adopted, the only just test of what constitutes property, in the absence of any universal international agreement, would be the law, not of the receiving, but of the ceding, state, just as the Percheman rule protects land titles which were valid and enforceable by the law, not of the receiving, but of the ceding, state.

procurador of the courts, and received a patent for the office in perpetuity approved by the King of Spain. After the cession of Porto Rico to the United States, the Military Governor issued an order abolishing the office. The plaintiff, thus deprived of what he considered as his property, brought an action in the United States Court of Claims for compensation.²⁵ On the dismissal of the plaintiff's petition, the plaintiff appealed to the United States Supreme Court. The court refused to allow a recovery. In its opinion the court seemed to direct most of its attention to showing what cannot be disputed,—that the United States Military Governor had the right, as a military occupant, to abolish the office. Not until the last ten lines of the opinion does one find a discussion of the real issue at stake, *i.e.*, whether or not the plaintiff is entitled to compensation for the abolition of the office. But although the court apparently based its decision solely upon the case of *O'Reilly de Camara v. Brooke*, arguing that the Spanish grant of the office did not bind the United States because it did not constitute property, yet the result of the decision seems correct; for apparently the grant was originally made for the benefit of Spanish coffers rather than for the Porto Rican public weal.²⁶

A similar situation was dealt with by Mr. Magoon in disposing of the claim of Antonio Alvarez Nava for damages for his deprivation of the office of notary in Porto Rico.²⁷ The claimant had paid 23,000 pesos to secure the property rights of the office, and sought compensation for his deprivation under the order of the United States Military Governor issued on October 28, 1898. Mr. Magoon intuitively reached the same decision as did the United States Supreme Court in the Sanchez case, but by quite another process of reasoning. He dismisses the complaint on the ground that, since the order abolishing the office was issued prior to the peace treaty, the claimant had no more right than others whose property was destroyed by the ordinary course of military occupation, and that he therefore had neither property nor rights at the time of cession. But it must not

²⁵ See 42 Court of Claims, 458.

²⁶ The case was cited with approval in 46 Ct. of Claims, 653.

²⁷ See Magoon's Reports, p. 454.

be forgotten that Spanish sovereignty over Porto Rico did not terminate with the United States military occupation, but continued until the ratification of the definitive treaty of peace; and it is a little difficult to see how, until the Spanish sovereignty was terminated, the claimant's rights were abrogated rather than suspended.²⁸

The principle of the "benefit test" remains the same if the obligation is represented by a bonded indebtedness, undertaken solely for the public improvement in question. This case, however, must be carefully distinguished from a general public indebtedness. The law of succession concerning the latter has given rise to endless discussion; and, as it does not strictly concern concessions and franchises, will not be discussed in this paper. But where the indebtedness was incurred solely for some specific public improvement, and the loan was used for the exclusive benefit of the *locus* ceded, the obligation will pass to the receiving state; otherwise, it will not. A striking instance of this was the much discussed case of the "Cuban bonds." The United States refused to assume liability upon these "Cuban bonds," issued by the Spanish Government prior to 1898, ostensibly for the public improvement of Cuba, upon the ground that the loan had never been expended for the actual benefit of Cuba.²⁹

²⁸ This case must not be confused with a somewhat similar case which arose in the Philippines. The claimant, in the latter case, held, under the Spanish law, a monopolistic license or concession granting him for five years the right to the exclusive manufacture of hemp by steam. The Attorney General, whose opinion was sought as to whether the claimant's monopoly should be protected after the cession of the Philippine Islands to the United States, held that the monopoly was binding upon the United States (22 Op. 617). This case, however, depends upon the special terms of Art. 13 of the Spanish-American Peace Treaty of 1898, which says:

"The rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba, and in Porto Rico, the Philippines, and other ceded territory, at the time of the exchange of the ratifications of this treaty, shall continue to be respected." It was not disputed that under the Spanish law, although probably not under the American law, this "patent" constituted a valid "property right."

It is also open to question whether the patent right in this case was not granted in order to stimulate industrial progress and invention in the Philippines and therefore for the sole benefit of the Philippines.

²⁹ See an article upon the "Cuban bonds" in the *Anglo Saxon Review* for

Occasionally it is stated that concessions will not bind the receiving state "if they unduly fetter it in the exercise of its police

June, 1899, by Hon. Whitelaw Reid, a member of the American Commission which negotiated the Treaty of Paris of 1898. Speaking of the "Cuban bonds," issued by the Spanish Government to the extent of about \$300,000,000, to the payment of which Spain pledged the revenues received by her from the Island of Cuba and her own guarantee, Mr. Reid says:

"But the fact was that these were the bonds of the Spanish nation, issued by the Spanish nation for its own purposes, guaranteed in terms 'by the faith of the Spanish nation,' and with another guarantee pledging Spanish sovereignty and control over certain colonial revenues. Spain failed to maintain her title to the security she had pledged, but the lenders knew the instability of that security when they risked their money on it. . . . The Spanish contention that it was in their power as absolute sovereign of the struggling island to fasten ineradicably upon it for their own hostile purposes unlimited claims to its future revenues would lead to extraordinary results. Under that doctrine any hard-pushed oppressor would have a certain means of subduing the most righteous revolt and condemning a colony to perpetual subjugation. He would only have to load it with bonds, issued for his own purposes, beyond any possible capacity it could ever have for payment. Under that load it could neither sustain itself independently, even if successful in war, nor persuade any other power to accept responsibility for and control over it. It would be rendered impotent either for freedom or for any change of sovereignty."

Regarding the "Philippine debt" Mr. Reid says: "Warned by the results of inquiry as to the origin of the Cuban debt, the American Commissioners avoided undertaking to assume this *en bloc*. But in their first statement of the claim for cession of sovereignty in the Philippines they were careful to say that they were ready to stipulate 'for the assumption of any existing indebtedness of Spain incurred for public works and improvements of a pacific character in the Philippines.' Not till they learned that of this entire 'Philippine debt' (only issued in 1897) over one-fourth had actually been transferred to Cuba to carry on the war against the Cuban insurgents, and finally against the United States, and that the most of the balance had probably been used in prosecuting the war in Luzon, did the American Commissioners abandon the idea of assuming it."

An article upon the same subject, even more interesting because it comes from the pen of a foreign writer belonging to a country which was not at the time in a friendly mood towards the United States, appeared in *Die Nation* of Berlin on April 22, 1899, by von Bar. The article is summed up by Westlake as follows: "Von Bar arrives at the conclusion that Cuba, whether her position—at that time uncertain—was to be more or less independent of the United States, would remain liable for so much of the loan money charged on her by Spain as had been spent on railways, harbors and other works of civilization for her benefit, but that neither Cuba nor the United States would be liable for so much as had been spent in maintaining her dependence by force. Spain, too, would be bound to furnish both to the victors and to her creditors, from her archives, the information necessary for so dividing the debt. In the same article von Bar

power" or interfere with its established institutions and policies.³⁰ The principle thus stated is so vague that it is difficult to cite any concrete applications of it. The statement probably signifies no more than the well recognized principle that no contract or concession can be specifically enforced in derogation of the public health, safety, peace, or morals,³¹ and also that contracts and concessions which unduly fetter the exercise of the state's police power usually were not originally granted for the sole benefit of the territory ceded.

Should any distinction be made between cases of cession and those of conquest? Although some writers have distinguished between the legal effects flowing from cession and those flowing from conquest, it would seem on principle that the two cases should be treated alike.³² The legal effects flow from the *fact* of the change of sovereignty—not from the form of the transaction by which title is passed. After all, cession is usually little more than a mere form,—the putting of the stamp of legal orderliness upon what in substance has been wrought through conquest or superior force; and it seems doubtful whether in principle the rights of private concessionaries should depend upon the formality of passing title through cession. If concessionaries secured greater rights in cession than in conquest, few states would care to increase their obligations by accepting a formal cession of territory acquired through military occupation. As a matter of actual practice, few courts seem to distinguish between change of sovereignty through conquest and change through cession.

As to whether any distinction should be made between cases where the ceding state remains in existence after the cession (*i.e.*, "partial points out that even where a debt remains chargeable on a ceded province or a conquered territory the new government cannot be fettered in its control of the taxation, or be obliged to admit the interference of an agency introduced by the displaced government; and that therefore a specific security on the customs levied within the province or territory by the state to which it belonged, and a stipulation for the payment to a particular bank of any revenue comprised in the security, must fall to the ground." (Westlake's International Law, Vol. 1, p. 79, note 1.)

³⁰ See, for instance, the discussion in Magoon's Reports, pp. 638, 639, 642, 643.

³¹ See below, p. 737.

³² Westlake (Vol. 1, p. 74) would seem to make no distinction between the two.

succession'') and where it does not (*i.e.*, "universal succession") there is some difference of opinion. Although in some parts of the law of succession this distinction may be of real significance, it would seem that in regard to concessions granted to private individuals no distinction should be made. The fact that the ceding state becomes extinct and therefore the concessionary may be without recourse against any one must be treated rather as the latter's ill fortune than as a reason for saddling the receiving state with an obligation to which it is not justly entitled. The aim of the law is not to provide all comers who have lost property with remedies, but to enforce obligations against those who in justice owe them. The English practice, as announced in the Report of the Transvaal Concessions Commission, supports the view that no such distinction should be made.³³

IV. EXCEPTIONS TO GENERAL RULE

The general rule that the obligation as well as the benefit of concessions passes to the receiving state where the concession was granted for the sole benefit of the territory ceded is subject to a number of important exceptions. Although it would be difficult to give an all-inclusive list of these exceptions, some of the more important of them are:

- (A) Contingent or unperfected concessions.
- (B) Grants without authority.
- (C) Grants for purposes of carrying on war.
- (D) Fraudulent grants.

³³ "In considering what the attitude of a conqueror should be toward such concessions, we are unable to perceive any sound distinction between a case where a state acquires part of another by cession and a case where it acquires the whole by annexation." (Report of Transvaal Commission, Par. 9. The report may be found in Parliamentary Papers, 1901, South Africa, Cd. 623.)

Westlake says: "It is generally agreed that the rules of state succession as affecting the right to things and other civil rights are the same in the case of the extinction of a state as in that of a partial cession of territory." (International Law, Vol. I, p. 74.)

A. Contingent or Unperfected Concessions

Where the concession has not yet been finally vested and perfected, or where the claimant had obtained a mere inchoate interest and could therefore not have judicially enforced the concession against the ceding state, as of right, no obligation passes to the receiving state.³⁴

In the case of Ramon Valdez y Cobian, who claimed against the United States, after the Spanish American Peace Treaty of 1898, a concession for the right to use the water power of the River Plata in Porto Rico, the claimant had complied with the preliminary requisites necessary under the Spanish law for the granting of the concession, but had not obtained the required final grant of authority from the governor of the province. Such a grant, under Spanish water law, even after all the preliminaries are complied with, is not a matter of right, but of grace, resting in the discretion of the governor of the province, and could not be insisted upon in the Spanish courts as an enforceable right. Hence the Attorney General correctly held that the claimant had acquired only an imperfect and inchoate right under the Spanish law, which did not survive the change of sovereignty so as to bind the United States.³⁵

³⁴ Although perhaps the language is a little too extreme, and therefore slightly misleading, this general principle was expressed by the Attorney General in an opinion rendered on July 27, 1899. He there said: "If in the granting of a right or privilege the sovereign has retained an iota of authority which may affect its untrammelled exercise and enjoyment, the right is not of the nature of an absolute one, but wholly of an inchoate and imperfect quality. As to inchoate, imperfect, incomplete, and equitable rights, the succeeding sovereign is the absolute dictator. They cannot be exercised against his sovereignty, but only by his grace, and his affirmative exercise is necessary to the validity of the concession." (22 Op. 549.) After quoting the foregoing passage, Magoon adds: "By parity of reasoning it would seem that, if at the time the title passed from one sovereignty to the other, anything remained to be done by the concessionaire which affected the untrammelled exercise and enjoyment of the right, then such right is not of the nature of an absolute one, and cannot be exercised against the new sovereignty excepting by its grace extended by an affirmative act." (Magoon's Reports, p. 640.)

³⁵ 22 Op. 546.

Subsequently, however, the claimant was granted a revocable license to utilize the water power in question by the United States Secretary of War. Since the rights in the stream had belonged to the Spanish Crown, and therefore

Another case of a similar nature was the Usera claim for a concession for the construction of a tramway in the city of Ponce, Porto Rico. On November 24, 1896, the Spanish Crown issued a royal permit to the claimants for the construction of a tramway; but the Spanish law then in force provided that all concessions of tramways occupying the highroads of the state should be granted only after the holding of a public auction, the formalities of which were carefully detailed by the law. No such auction had ever been held, nor had any law been passed dispensing with it. Mr. Magoon, in advising the War Department whether or not the claimant's rights must be respected, therefore advised that the claimants had acquired no complete and vested right or franchise, but merely an inchoate and incomplete one. Unfortunately, Mr. Magoon did not stop with that. He went on to say:

They did, however, acquire certain inchoate rights, which are property, and the protection and enforcement of which said property rights are imposed upon the United States by the stipulations of the late treaty with Spain (sec. 8, treaty with Spain, Paris, Dec. 10, 1898). Not only must the United States protect and enforce said property rights, but the treaty provides that the change of sovereignty "can not in any respect impair the property or rights . . . of individuals." The Messrs. Usera, or their assigns, have the right to call for an auction sale of the franchise right, to secure which their proceedings were inaugurated, which said auction must be in accordance with the Spanish law and their rights protected as by that law provided. (*Bryan v. Kennett*, 113 U. S. 179, 192, and cases cited; *Strother v. Lucas*, 12 Pet. 410, 434; *Hornsby v. United States*, 10 Wall. 224, 242.)³⁶

The assumption that the claimant holds the *same* rights under the receiving state which he held under the ceding state is a not uncommon fallacy. Mr. Magoon's mistake was corrected by the Attorney General, who disapproved the conclusion that the applicants had

passed to the United States, they could not be permanently granted away except by Congress, although a revocable license granting the use of them could be issued by the Secretary of War during the time the territory was under military occupation. The license thus granted was subsequently revoked, and the matter disposed of by the civil government of Porto Rico created by Congressional enactment. (Magoon's Reports, p. 495.)

³⁶ Magoon's Reports, p. 531.

a right to call upon the military government of Porto Rico to complete the grant. He said: "The Messrs. Usera have not a complete and vested franchise or concession for the construction of a tramway from Ponce to Port Ponce, and the War Department is without power to exercise the prerogatives of the Government to grant or complete such concession."³⁷ The Secretary of War disposed of the matter pursuant to the opinion of the Attorney General.³⁸

B. Grants without Authority

The second class of cases involving grants made by states or officers without the granting power requires little comment. It is fairly obvious that a grant made by an officer without power is void, and hence will not be binding upon the receiving state. The same is true of a state which is without granting power. In *Davis v. The Police Jury of Concordia*, 9 How. 279, Spain had granted on the 19th of February, 1801, a perpetual ferry franchise in Louisiana upon which the claimant relied in a suit before the United States Supreme Court in 1850. The court held that since Spain had ceded Louisiana to France by the treaty of St. Ildefonso, which was signed on October 1, 1800, and which was therefore retroactively operative as from that date, Spain in 1801 had no power to make such a grant, and hence the court refused to recognize any rights in the claimant.

³⁷ 22 Op. 554.

³⁸ The final authority to determine whether a public contract is a vested and perfected concession which survives the change of sovereignty, or a mere imperfect interest, lies, of course, in the courts of the receiving state; but it is believed that in the two above cases the Attorney General correctly stated the law. In the case of *Michael J. Dady & Co.*, who claimed a concession to lay the sewers and to pave the streets of the city of Havana, the Attorney General held that any rights of Dady & Co., which "could properly be called vested rights," should be protected; but since the question was an exceedingly nice one and there was no compelling necessity for a determination of the matter, the Attorney General refused to decide whether the claimants did hold a vested and perfected right or a mere imperfect and inchoate interest, leaving that question for the Cuban courts to decide. (22 Op. 526.)

C. Grants for Purposes of Carrying on War

Most writers agree that where the concession or contract was granted for the purpose of carrying on war against the receiving state or for suppressing a rebellion against the ceding state, no binding obligation will pass to the receiving state.

Says Westlake:

Those who lend money to a state during a war, or even before its outbreak when it is notoriously imminent, may be considered to have made themselves voluntary enemies of the other state, and can no more expect consideration on the failure of the side which they have espoused than a neutral ship which has entered the enemy's service can expect to avoid condemnation if captured. The principle may sometimes have a wide application. When Cuba was emancipated from Spain by the Spanish-American war, it could scarcely be expected that either she or the United States should recognize the loans which Spain had charged on her for the cost of repressing the Cubans, during the long and intermittent struggle of which her emancipation was the close.³⁹

Although the comparison between the making of a private loan to a belligerent government and the entrance by a neutral ship into the enemy's service is rather an unfortunate one, since the making of a private loan is not an unneutral act, yet Westlake's underlying idea is quite sound, and is in accord with the expressions of numerous other writers, and with the action of the United States in the case of the Cuban bonds.

D. Fraudulent Grants

Where the concession has been granted by the ceding Power in fraud of the rights of the receiving Power, the latter will not be bound by the concession so granted. Questions of this kind often arise when a state has been compelled to sign a protocol agreeing to give up a part of its territory, and the definitive treaty of peace or cession has not yet been signed, so that the ceding Power still retains the lawful sovereignty of the territory. To an unscrupulous official the temptation may seem pressing to sell all manner of con-

³⁹ International Law, Vol. 1, p. 78.

cessions and thus to reap large profits from auctioning off concessions in the last few months before the new master enters. This was the situation as it existed in Cuba in the fall of 1898, after the signing of the peace protocol of August 12, 1898, between the United States and Spain, but before the signing of the definitive peace treaty of December 10, 1898. Major General Leonard Wood, writing to the Secretary of War on June 5, 1901, suggested that in his opinion all grants and concessions made by the Spanish Government between the date of the signing of the peace protocol and the time of final evacuation must be held void, and therefore not binding upon the United States. In commenting upon this letter, Mr. Magoon is quite correct when he asserts that it does not state the true rule of international law.⁴⁰ Sovereignty does not pass until the treaty of cession is signed and ratified; and so long as the ceding state remains in possession and retains lawful sovereignty, concessions granted by it in good faith are *prima facie* valid. During this trying time, the ceding state does not hold the territory to be ceded as a trustee for the receiving state. It is not liable for the profits received during this period, and it has the right to make all such public grants and concessions as are necessary for the ordinary maintenance and progress of the country, but not those of an extraordinary or unusual kind. It is only when the concession was granted out of the ordinary course of administration, or for motives other than that of benefiting the *locus* ceded (whether in fact the concession was attended with actual benefit or not), that it may be set aside for fraud.

These principles came into play during the closing days of the Spanish regime in Cuba. The Spanish Secretary of Public Works and Communications, Dolz by name, believing that harvest time had come, assumed the right to sell concessions to all comers. In declining to recognize as valid one of these "last minute" concessions granted on December 7, 1898, the Attorney General said:

The decree issued by Dolz on December 7, 1898, is subject to some suspicion, because it was through this same Secretary Dolz that the public sale of almost all conceivable public franchises in Cuba was

⁴⁰ Magoon's Reports, p. 596. See, also, Halleck's International Law (3d ed.), Vol. 2, Chap. 33, Sec. 24.

advertised to take place in the latter days of December, just prior to the possession of the island by the United States forces, a scheme so obviously conceived in fraud as to have compelled the military authorities to put a stop to it.⁴¹

V. CASES DISTINGUISHED FROM THE GENERAL RULE

Before concluding this review of the American law, it will perhaps be useful to point out three situations to which the principle of succession here discussed is not applicable, but which, because of a certain superficial similarity, sometimes lead to confusion.

(A) No rule of international law prevents confiscation *after* cession.

(B) No rule of international law prevents confiscation under military occupation.

(C) The principle discussed in this paper has no application to concessions granted by municipalities, provinces, or other local bodies.

A. *Confiscation after Cession*

The province of international law is to determine what effects flow from a cession of territory; with the municipal acts of the receiving state committed after the completion of the cession and affecting only its own subjects, international law has nothing whatsoever to do. International law only goes so far as to say that in certain circumstances the mere cession itself shall not work a forfeiture. Whether concessions or other property will be protected or not, after the cession has been completed, is a question for the municipal law of the receiving state. In the United States the Fourteenth Amendment to the Constitution would prevent the taking of property without due process of law. But nothing would make it illegal to appropriate concessions or other property under the right of eminent domain, or even under the general police power of the state, so long as compensation were given. Thus, Attorney General Griggs, in an opinion rendered on July 10, 1899, in considering the claim of a certain Michael J. Dady & Company to proceed with the work of paving the streets and constructing the sewers of Havana, under a

⁴¹ 22 Op. 525. See also Magoon's Reports, p. 637.

concession acquired by them from the Spanish Government prior to the cession of Cuba, says:

If the authorities were convinced that Michael J. Dady & Company had a vested right or a complete contract it would be within their lawful province to suspend its execution if they thought the public health or other interests required. Of course such an interference with the exercise of a vested contract right would involve the payment hereafter of legal damages on account of such interference, but the public good would be the higher law and would justify the interference.⁴²

Similarly, Mr. Magoon advised that the United States could not compel a municipality to observe the terms of a concession involving an unwarrantable restriction upon the municipal police power; and regardless of whether the concession was binding under the law of the receiving state or not, the United States would not compel the municipality to observe its terms. This, of course, would not affect the right of the holder of the concession to claim compensation for his deprivation of property.⁴³

B. No Rule of International Law prevents Confiscation under Military Occupation

During the time of military occupation, before cession, notwithstanding the provisions of Article 46 of the Fourth Hague Convention of 1907, private property may be seized or even destroyed by the military occupant when vital military necessity so requires, even without compensation.⁴⁴ Concessions and monopolistic franchises are no exceptions to this rule. So, in an opinion rendered by the United States Attorney General on March 18, 1901, in regard to the question

⁴² 22 Op. 529.

⁴³ Magoon's Reports, p. 534. In this case the municipality of Sancti Spiritus had granted in 1897 to one Gutierrez, a concession to build a market house, and a monopoly preventing the free buying and selling of market supplies outside the market house. Mr. Magoon held that the concession could not be specifically enforced against the municipality.

To the same effect, see Magoon's Reports, p. 573: "In the same way the rights of the parties claiming under this concession, whatever they may be, are suspended if the exercise of said rights endangers the public health."

⁴⁴ Westlake's International Law, Vol. 2, p. 92.

of whether the United States military commander occupying Cuba could set up a military telegraph line in violation of a vested concession for a telegraph monopoly granted to the International Ocean Telegraph Company, it was held that the United States War Department was justified, under the right of military occupation, in maintaining the telegraphic line between Santiago and Havana, Cuba, and in transmitting private messages over it, although the transaction of such business might be in conflict with the vested rights of the International Ocean Telegraph Company.⁴⁵ During the military occupancy, however, until the former sovereignty is displaced by cession or completed conquest, concessions and franchises, the exercise of which is prohibited by the military occupant, are suspended rather than abrogated; if, for instance, the military occupant should be driven out of the occupied territory, the concessions would revive, and bind again the granting state.

C. Concessions granted by Municipalities, Provinces, or other Local Bodies

Concessions, contracts, or franchises granted by municipalities, districts or provinces, within the territory ceded, are not impaired by a cession of the territory; as in all contracts to which the state is not a party cession has no effect upon the parties' rights and liabilities. Upon such contracts the government of the receiving state very clearly is not bound. So, where the British Ambassador pressed the claim of an English company against the United States Government, then in occupation of the city of Manila, for damages upon a contract made by the company with the municipal authorities of Manila prior to 1898, the United States held that the liability, if any, rested upon the municipality of Manila and was in no way altered by the cession.⁴⁶

⁴⁵ 23 Op. 427.

⁴⁶ Magoon's Reports, p. 412. The Secretary of War, to whom the State Department referred the matter, wrote: "I am of the opinion that if the existence of the alleged contract were established the alleged liability, if any exists, would attach to the municipality of Manila, and would not attach to the military government of the Philippines nor the Federal Government of the United States. The municipality of Manila is a municipal corporation, and, as such, may be sued in the courts. The controversy between Messrs. Merry-

As a general rule, all debts and obligations assumed by municipalities before cession continue binding after cession.⁴⁷

VI. GENERAL PRINCIPLES OF ENGLISH PRACTICE

While the United States was solving questions of succession which arose upon the freeing of Cuba and the annexation of Porto Rico and the Philippines in 1898, another great Power was working out similar problems in South Africa. Since the study of the administration of international law within the courts of a single nation is attended with the danger of developing an isolated, or a too narrowly municipal understanding of international law, it may prove serviceable, before concluding this paper, to suggest in broadest outlines the principles of the English practice.

At the outset two general principles of English law must be

weather & Sons and the city of Manila stands on the same footing as a like controversy between individuals. The questions involved are of a kind and character usually resolved by judicial proceedings. Therefore the parties secure an adequate remedy by applying to the courts."

⁴⁷ See *Vilas v. Manila*, 220 U. S. 345. This case held that "while military occupation or territorial cession may work a suspension of the governmental functions of municipal corporations, such occupation or cession does not result in their dissolution"; and that "the cession by the treaty of 1898 of all the public property of Spain in the Philippine Islands did not include property belonging to municipalities, and the agreement against impairment of property and private property rights in that treaty applied to the property of municipalities and claims against municipalities."

The property, as well as the obligations of municipalities, remains unaffected by a change of sovereignty. The ownership of public land and belongings held by municipalities before cession, does not pass by cession to the receiving state, but remains in the municipalities. See Magoon's Reports, pp. 383 and 388, and cases there cited, from which he concludes that "The municipalities of Cuba now possess the same rights of property as they possessed under Spanish sovereignty" (p. 388). So, in *Townsend v. Greeley*, 5 Wall. 326, the United States Supreme Court held that "the treaty of Guadalupe Hidalgo, between the United States and Mexico, does not divest the pueblo, existing at the site of the city of San Francisco, of any rights of property or alter the character of the interests it may have held in any lands under the former government. It makes no distinction in the protection it provides between the property of individuals and the property held by towns under the Mexican Government."

Of course, as need hardly be said, municipalities after cession are subject to whatever regulations or laws the new sovereign may care to impose upon them.

noticed. Although in the United States international law is recognized as part of the law of the land,⁴⁸ it is open to some doubt whether it can be so considered in England.⁴⁹ Indeed, some English courts have gone so far as to state expressly that international law cannot be "deemed to be part of the law of the land." An English court which adopts such a view would not very readily enforce the rights of concessionaries arising under international law.

In the second place, the English law of succession is complicated by the peculiar English doctrine that municipal courts cannot take cognizance of questions arising out of what are known as "acts of state." An "act of state" has been defined as "a public act, or act done by or under the authority of the Crown, outside the British territory, and affecting aliens. Such acts are not cognizable by the Courts; and in regard to them the plea of 'act of state' will, if proved, serve to debar the Courts from exercising jurisdiction."⁵⁰ A long series of cases have decided that matters connected with the annexation of territories are entirely matters of state, and not justiciable by municipal courts.⁵¹

In the case of *Postmaster General v. Tante*, 1905 Transvaal Supreme Court Reports, 582, the court, holding that concessionaries cannot sue in the courts of the receiving state, said:

But the conquering state cannot be sued in its own courts in respect of contractual obligations alleged to have been incurred by its adversary, because the annexation is an act of state carried out by the supreme authority of the conquering country, and neither the act itself, nor its legal consequences, can be called in question in the courts of that country. Those courts have no power to adjudicate upon it, and they are bound to recognize it. It is, therefore, im-

⁴⁸ *The Paquete Habana*, 175 U. S. 677.

⁴⁹ See Pitt Cobbett's *Leading Cases on International Law* (3d ed.), Vol. 1, pp. 21, 22.

⁵⁰ *Ibid.*, p. 18.

⁵¹ See, for instance, *Nabob of the Carnatic v. The East India Co.*, 1 Vesey Junior, 371, 2 Vesey Junior, 56; *Elphinstone v. Bedreechund*, 2 State Trials, N. S. 379; *Rajah of Coorg v. East India Co.*, 29 Bevan, 300; *Doss v. Secretary of State for India*, L. R., 19 Equity, 509; *Singh v. Secretary of State for India*, L. R., 2 Indian Appeals, 38; *Rustumjee v. The Queen*, 2 Q. B. D. 69; *Secretary of State for India v. Kamachee Boye Sahiba*, 13 Moore, P. C. 22.

possible for them to declare that, as a result of annexation, any contractual obligations have been transferred from the one Government to the other.⁵²

The much quoted case of *Cook v. Sprigg*, 1899 A. C. 572, similarly decided that since annexation constituted an "act of state," and since obligations thereby assumed could not therefore be enforced by the municipal courts of the annexing state, the grantees of certain concessions made by the ruler of Pondoland, could not, after the annexation of that country by Great Britain, enforce such concessions against the Crown.⁵³

In the well known case of *West Rand Central Gold Mining Co., Ltd. v. The King* (L. R. 1905, 2 K. B. 391), the question was whether the seizure by the Transvaal Government, prior to the outbreak of war, of certain gold belonging to the plaintiffs created a valid claim

⁵² 1905 Transvaal Supreme Court Reports, 586.

⁵³ The case is sometimes cited to prove that the obligations arising under concessions will not survive cession; but the judgment does not support this conclusion. The facts were as follows: Between 1889 and 1893 certain concessions were granted to the plaintiff by Sigcau, then ruler of Pondoland, of railway, mineral, land, and trading rights in that country. In 1894 Pondoland was formally annexed to the British dominions, nothing being said as to concessions in the treaty of annexation. Subsequently the plaintiff brought an action against the Premier of Cape Colony under the Crown Liabilities Act of 1888 for the enforcement of his concession; and the colonial court having decided against him, he appealed to the Privy Council in England. The Privy Council dismissed the appeal. The case can hardly be cited as an authority to prove that concessions will not bind the receiving state; for the court showed that the concessionaries "never in fact obtained possession of the lands or exercised the rights which these documents purported to convey" (p. 577); and also it appeared that "the said concessions had not been carried into practical effect, and that they created no legal obligations which could be enforced in a Court of law against the government of Cape Colony, inasmuch as the said Sigcau might at any time have repudiated the said rights and privileges which he had granted to the appellants, and there would have been no remedy for such repudiation open to the said appellants" (p. 573). But above all, the court held that there was "a more complete answer to any claim arising from these instruments. The taking possession by Her Majesty, whether by cession or by any other means by which sovereignty can be acquired, was an act of State and treating Sigcau as an independent sovereign—which the appellants are compelled to do in deriving title from him. It is a well-established principle of law that the transaction of independent States between each other are governed by other laws than those which municipal courts administer."

against the British Government which could be enforced in British municipal courts after the annexation of the Transvaal. Although a dictum of the court squarely asserted that the sovereign of a conquering state succeeded to none of the obligations of the conquered, yet the real basis for the judgment rendered by the court in favor of the Crown rested upon the fact that the matter concerned an "act of state."⁵⁴

According to English law, therefore, concessions and contracts, even where expressly protected by the treaty terms, will apparently not be enforceable in English municipal courts. This makes it impossible to ascertain from the action of English courts the English view of the international law of succession; instead one must turn to the actual practice of the British Government.

Prior to 1900 the British practice had not been altogether uniform.⁵⁵ In August, 1900, however, Great Britain appointed a special commission to inquire into and report on the various concessions which had been granted by the Transvaal Government, and to study the problem of how England should treat obligations created by the conquered state in respect to the annexed territory. The report of this commission, issued April 19, 1901, has attracted considerable attention as an exposition of the English view of succession.⁵⁶ It reads in part as follows:

7. It is desirable to state here the broad principles which we considered applicable to the problem before us.

8. On the 1st September, 1900, Her late Majesty annexed the

⁵⁴ "Upon this part of the case there is a series of authorities from the year 1793 down to the present time, holding that matters which fall properly to be determined by the Crown by treaty or as an act of State are not subject to the jurisdiction of the municipal courts, and that rights supposed to be acquired thereunder cannot be enforced by such courts." Per Lord Alverstone, C. J.

⁵⁵ In 1877, on the annexation of the Transvaal, the British Government assumed responsibility for the debts of the Transvaal, including debts for warlike stores, amounting to 30,381 pounds and debts to banks of 28,946 pounds (Parl. Paper C 2144, p. 278); and on the annexation of Burma claims for goods actually supplied to the government of the annexed state prior to annexation were paid, although incomplete contracts were not recognized and "all cases were treated strictly on their merits."

⁵⁶ The report may be found in Parliamentary Papers, 1901, South Africa, Cd. 623; pp. 6-8.

territories and obliterated the sovereignty of the South African Republic. It has, therefore, become necessary that the new Government should decide in what relation it stands to the concessions granted by the Government of the late Republic, and upon this point we submit the following observations:

9. It is clear that a state which has annexed another is not legally bound by any contracts made by the state which has ceased to exist, and that no court of law has jurisdiction to enforce such contracts if the annexing State refuse to recognize them. But the modern usage of nations has tended in the direction of the acknowledgment of such contracts. After annexation, it has been said, the people change their allegiance, but their relations to each other and their rights of property remain undisturbed, and property includes those rights which lie in contract. "*La conquête change les droits politiques des habitants du territoire, et transfère au nouveau souverain la propriété du domaine public de son cédant. Il n'en est pas de même de la propriété privée qui demeure incommutable entre les mains de ses légitimes possesseurs.*" Concessions of the nature of those which were the subject of our inquiry presented examples of mixed public and private rights; they probably continue to exist after annexation until abrogated by the annexing State, and, as matter of practice in modern times, where treaties have been made on the cession of territory, have been often maintained by agreement. In considering what the attitude of a conqueror should be towards such concessions we are unable to perceive any sound distinction between a case where a State acquires part of another by cession, and a case where it acquires the whole by annexation. The opinion that in general private rights should be respected by the conqueror, though illustrated and supported by jurists by analogies drawn from the Roman law of inheritance, is based on the principle, which is one of ethics rather than of law, that the area of war and of suffering should be, so far as possible, narrowly confined, and that non-combatants should not, where it is avoidable, be disturbed in their business; and this principle is at least as applicable to a case where all as where some of the provinces of a State are annexed.

10. Though we doubt whether the duties of an annexing State towards those claiming under concessions or contracts granted or made by the annexed State have been defined with such precision in authoritative statement, or acted upon with such uniformity in civilized practice, as to warrant their being termed rules of international law, we are convinced that the best modern opinion favors the view that, as a general rule, the obligations of the annexed State towards private persons should be respected. Manifestly the general rule must be subject to qualification; *e.g.*, an insolvent State could not by aggression, which practically left to a solvent State no other course but to annex it, convert its worthless into valuable obligations; again, an

annexing State would be justified in refusing to recognize obligations incurred by the annexed State for the immediate purposes of war against itself; and probably no State would acknowledge private rights, the existence of which caused, or contributed to cause, the war which resulted in annexation.

11. Subject to these reservations His Majesty's Government in dealing with the concessions in question will probably be willing to adopt the principle which, in the case of the annexation of Hanover by Prussia (the modern case most nearly corresponding with that under consideration), was proclaimed by the conquerors in the following terms: "We will protect everyone in the possession and enjoyment of his duly acquired rights." (Royal Prussian Patent, 3rd Oct., 1866.)

12. The acceptance of this principle clearly renders it necessary that the annexing Government should in each case examine whether the rights which it is asked to recognize have, in fact, been duly acquired. It is an obvious corollary that the rights in question must be valid not only by reason of due acquisition in the first instance, but by reason of their conditions having been subsequently duly performed.

13. Applying these principles more in detail to the case of the concessions with which we have had to deal, we have come to the conclusion that the cancellation of a concession may properly be advised when

- (i) The grant or the concession was not within the legal powers of the late government; or,
- (ii) Was in breach of a treaty with the annexing State; or
- (iii) When the person seeking to maintain the concession acquired it unlawfully or by fraud; or
- (iv) Has failed to fulfill its essential conditions without lawful excuse.

In any case, falling within these categories, where there has either been no "duly acquired" right, or there has been a non-fulfillment of essential conditions by the concessionaire, cancellation or modification without compensation appears to us, in the absence of special circumstances, to be justifiable.

14. We further think that the new Government is justified in cancelling or modifying a concession when

- (v) The maintenance of the concession is injurious to the public interest.

15. In this last case, however, the question of compensation arises, inasmuch as it would be inequitable that a concessionaire should lose without compensation a right duly acquired, and whose conditions he had duly fulfilled, because the new Government differed from the old in its view as to what was, or was not, injurious to public interest even though the opinion of the new Government were obviously the

true one. We do not consider the actual amount of compensation payable as a matter within the scope of our inquiry, but we submit the following observation as to the principles relevant to the question:

In determining the amount of compensation in respect of losses sustained by the owner of a concession cancelled or modified as injurious to the public interest, regard may justly be paid to the question whether the owner, at the time when he received or acquired the concession, knew, or reasonably ought to have known, that it was precarious. A concession may be precarious for many reasons; but it certainly is so, if the subject-matter of it is closely related to large and changing public interests. In such matters, no reasonable man can anticipate that a Government can indefinitely fetter the legislation of the future; and indeed, in countries such as Great Britain, where opinion is tender to vested interests, modification without compensation has been made in the statutory powers and privileges of undertakings incorporated under Parliamentary powers and relating to gas, water, electric light, public transport, and other subjects with which the well-being of the community at large is closely bound up.

16. We submit also that no concessionaire can rightly claim to be placed in a better position under the new than under the old Government, and therefore in assessing compensation to any owner of a concession in respect of his loss, the value of his interest should be taken as it was before the war which has resulted in annexation, and before the superior credit and stability of the annexing State have appreciated his property.

17. On the other hand, when public interest requires the modification or cancellation of a justly acquired concession, due consideration ought properly to be shown in cases where new, and under the circumstances, hazardous enterprises have been pioneered into stability in an unsettled and undeveloped country where profit was uncertain, and total loss a possible contingency.

The strong similarity between the English law as outlined in this report and the American law will at once be evident. The striking difference is that England holds that municipal courts are not the proper enforcing agencies for securing rights arising out of annexation, while in America such rights may be enforced in municipal courts. Even English writers themselves seem inclined to explain away the statement that "a state which has annexed another is not legally bound by any contracts made by the state which has ceased to exist." Westlake says:

The latter dictum [*i.e.*, the sentence just quoted] is true, since courts of law are bound by the will of the sovereign power of the

country, whether that will be just or unjust. The former dictum, denying all continuing legal obligation of contracts in cases of state succession, is to be explained by the narrow meaning which the commissioners evidently attached to the term "legal," partly from attachment to Austin's narrow definition of law, and partly from connecting the term exclusively with the ordinary courts of law, which in England are not the only channels of redress where the Crown is concerned. The legality of a claim, in any but a misleading sense, does not depend on the particular method that ought to be taken in order to enforce it. In any case the dictum was superfluous for the commissioners' object.⁵⁷

Another difference lies in the fact that the Transvaal Report says nothing about the requirement that concessions and contracts, to bind the receiving state, must have been granted for the general benefit of the *locus* ceded,—a limitation which, as has been noted, was adopted by the United States in cases following the Spanish-American War. On the other hand, the general principles suggested in the report, and the exceptions made to the general rule, evidence a strong similarity to the law as laid down in the United States.

Perhaps the three most interesting cases disposed of by the Transvaal Commission were the cases of the Prætoria-Pietersburg Railway, the Dynamite Concession, and the Netherlands South African Railway. In the first of these three cases the Commission considered a concession granted by the Transvaal Government to an English company for the maintenance of a railway line. The Transvaal Government owned three-fifths of the company's shares and had guaranteed the debenture interest and a limited dividend on the shares issued to the public. Although there was evidence to show that the line had been used for the purposes of the war against Great Britain, yet the British Government recognized the concession as binding, and as-

⁵⁷ Westlake's International Law, Vol. 1, p. 81. Pitt Cobbett, in speaking of the same sentence, says: "The Report, whilst purporting to accept the judicial view, nevertheless qualifies this, in effect, by the admission that 'the modern usage of nations tends in the direction of the acknowledgment of such contracts,' and that 'the best modern opinion favors the view that as a general rule the obligations of the annexed State towards private individuals should be respected.'" Pitt Cobbett's Leading Cases on International Law (3d ed.), Vol. 2, p. 241.

sumed all the liabilities of the Transvaal Government under its guarantee.⁵⁸

The case of the Dynamite Concession involved the monopoly for the exclusive manufacture and sale of explosives in the Transvaal. This monopoly was vested in the Transvaal Dynamite Company, which was controlled by German interests. Upon the recommendation of the commissioners, the British Government cancelled this concession, upon the ground that the company had violated the conditions of its contract, and had secured the legislative condonation of its breach of conditions by bribery and corrupt practice.

The case of the Netherlands South African Railway involved a concession granting to a Dutch company an exclusive right to construct and work all main railway lines in the Transvaal. During the war the company, through its local officials and with the approval of the directors, pursued a course of open hostility to the British Government, facilitating the members of its staff in assisting military operations against the British, making arms and ammunition for the Transvaal Government, destroying bridges in British territory, and going far beyond the purposes of its charter, the terms of its concession, or the requirements incident to its being under the local authority of the Transvaal Government. The Commission recommended the cancellation of the concession, partly upon the ground of its excessively active participation in the hostilities carried on against the British Government, and partly on the ground that the grant of such a wide-reaching monopoly and its ownership and control by foreign (chiefly German) capital, was injurious to the public interest. The British Government cancelled the concession, but assumed the entire liability of the company's debentures, and undertook to indemnify all those who had become shareholders prior to the outbreak of war, excepting the managers and agents of the company and the Transvaal Government. It is said that out of some 14,000 shares the British Government paid for all but about 500. The policy of

⁵⁸ "This concession appears to have been lawfully entered into, and honestly carried out. The railway performs a useful service to the principal industry of the country in facilitating the immigration, and will form an important link in the chain of communication with the Northern Territory, to which it will presumably be extended." Parl. Papers, 1901. So. Africa, Cd. 623, p. 59.

making compensation to the holders of the company's debentures and stock rather than to the company itself seems somewhat questionable, since such a procedure produces uncertainty and confusion, and cannot but shake the confidence of future investors.⁵⁹

Within the compass of a short paper it is not practicable to make an examination of the Continental practice. The weight of authority seems to lend support to the view that concessions are generally binding upon the receiving state; but the practice of European countries is not always consistent nor altogether uniform.⁶⁰

⁵⁹ For a detailed report of the facts of the case, and criticism of the action of the British Government, see Sir Thomas Barclay's *Problems of International Practice and Diplomacy*, p. 47. Sir Thomas Barclay seems to have in mind, however, rather the physical assets of the railway company than the value of the concession belonging to it.

⁶⁰ Fiore says: "The annexing government succeeds to the rights and obligations resulting from contracts regularly stipulated by the ceding government in the relative public interest of the territory ceded." 1. Fiore, No. 356, p. 313.

Also see, for instance, the judgment of the Court of Cassation of Florence rendered on July 26, 1878, in which the court said: "The principles of public law provide that when it is a case of partial cession of territory the obligations contracted by the state with regard to the ceded territory pass with that territory to the state which succeeds"; and again on December 15, 1879, the same court said: "By public law, the state which succeeds in one part of the territory of another state is bound, independently of special conventions, by the obligations legally contracted by the latter regarding the territory in which it succeeds."

After citing various expressions to the same effect by leading jurists, Keith, in his *Theory of State Succession*, adds:

"In addition to the jurists there is a formidable list of treaties. The treaty of 10th November, 1859, confirms railway concessions granted by the Austrian Government (Art. 2) and recognizes all contracts regularly made by that Government (Art. 9). The treaty between France and Sardinia of 23rd August, 1860, states (Art. 5) that France succeeds to the rights and obligations resulting from contracts regularly made by Sardinia for objects of public interest concerning especially Savoy or Nice. The treaty of 30th October, 1864, between Austria, Prussia and Denmark contains (Art. 17) a precisely similar stipulation, as does the treaty of 3rd October, 1866, between Austria and Italy (Art. 8). England, in ceding the Ionian Islands in the treaty of 29th March, 1864 (Art. 7), stipulated that Greece should take over all contractual obligations; so all trading and mineral concessions by the Government were safeguarded by the treaty for the cession of Heligoland of 1st July, 1890 (Art. 9). The concessions of British subjects in Swaziland were guaranteed by Art. 7 of the Convention with the Transvaal of 10th December, 1894. The United States treaty with Spain of 10th December, 1898, provided for the recognition of contracts and concessions,

VI. CONCLUSION

The suggestion that concessions, to be binding, must have been granted with a view to the general improvement or benefit of the *locus ceded*, is the peculiar contribution of America. Although there have not been as yet enough ruling upon this particular matter to justify calling it a settled American doctrine, it has been sufficiently enunciated to demand the consideration of all interested in this branch of the law. Yet the "benefit test," equitable and sound as it seems, is not entirely without disadvantages and difficulties. Where the receiving state is not bound by the concession, the rule may lead to the practical result of depriving concessionaries of any recourse, since the ceding state may be extinct, or unwilling to accord them any compensation. It is also subject to the objection that it opens up to the courts of the receiving state a possible way of avoiding liability upon concessions, by the simple assertion that the concession was not in fact granted for the benefit of the *locus ceded*. Even to a court sincerely anxious to do justice, it presents a test which may be attended with considerable difficulty of application. For all these reasons one cannot prophesy what may be its future.

On the other hand, the rule has many manifest advantages. Abstractly, it seems clear justice that a state, acquiring territory by conquest or cession, should not be saddled with debts and obligations which it never itself undertook and which were never created for the benefit of the territory acquired by it. In fact, a rule of absolute liability regardless of benefit would seem actually unjust. Although

including patents and copyrights. So the Bank of Annecy, in Savoy, is confirmed in its concessions by Art. 6 of the treaty of the 23rd August, 1860, while Art. 8 of the same treaty protects patents. The treaty of the 3rd October, 1866, contains (Art. 10) a similar recognition to that of the treaty of Zürich regarding railway concessions. The treaty of the 11th December, 1871 (Art. 10), confirms patents granted to Frenchmen in Alsace-Lorraine; the treaty of 1st July, 1890, recognizes Lloyd's signalling rights in Heligoland (Art. 12-6), besides other Government concessions. It may also be added that the Prussian Government in taking over Hanover, Hesse, Frankfort, Nassau and Schleswig-Holstein (Royal Patents of 3rd October, 1866, and 12th January, 1867), which are cases of annexation by conquest, took over and recognized all Government concessions and contracts." Keith's Theory of State Succession (1907), pp. 66, 67.

the test of the benefit may be difficult to apply, the difficulty of applying the "property test" is incomparably greater. Furthermore, after a few decisions have settled the general principles by which "benefit" is to be determined, many of the difficulties of application will disappear. "Benefit" should be interpreted in a broad way. It need not necessarily signify the direct and immediate financial benefit of the ceded territory; it is enough if the concession was granted to further the general progress and development of the country. The building of a railway, the opening up of a country's resources, the furthering of a district's industry and economic development, may all be for the general benefit of a country. But a concession for exploitation, granted, at the expense of the local district, for the gain of the granting government as the chief end in view, would clearly not be for the benefit of the *locus* ceded; and it would seem unjust that the receiving state should be saddled with such an obligation. The danger of attempting to enforce as international law a sweeping generalization, making *all* concessions binding upon the receiving state, is that the injustice of cases such as that suggested will tend to cause a reaction in favor of the view, which has been already advanced by some writers, that *no* concessions are legally binding upon the receiving state.

Whether or not the "Benefit Rule" will be permanently incorporated into international law only the future can tell. The law will doubtless be freshly moulded by the judicial and administrative decisions in the years following the termination of the present world conflict, when the whole question of succession will assume a new and large importance. May it not be that by the adoption of the "benefit test" as suggested by the practice of the United States, international law may reach a closer approximation to the eternal principles of justice, or "jural postulates," which must be at the foundation of all law which endures?

FRANCIS B. SAYRE.

TREATMENT OF ENEMY ALIENS

(Being Part XV of Some Questions of International Law in the European War, continued from previous numbers of the JOURNAL)

MEASURES IN RESPECT TO PROPERTY AND BUSINESS

A. IN GREAT BRITAIN

The English Custodian. The outbreak of the war found in nearly every belligerent country vast amounts of property, both real and personal, owned by persons of enemy nationality or domicile.¹ Likewise, enemy persons were the owners or shareholders in many business and industrial enterprises, corporations, partnerships, etc. With a view to preventing such property from being used or such business from being conducted in a manner prejudicial to the national defense or for the benefit of the enemy, the governments of all the belligerent countries very early adopted measures for placing enemy-owned property and enemy business enterprises under the control or supervision of the public authorities.

In Great Britain, such property was placed under government control by the Trading with the Enemy Amendment Act of November 27, 1914, which directed the Board of Trade to appoint a custodian of enemy property for England and Wales and another for Scotland and Ireland. For England and Wales the public trustee, an officer already in existence, was designated to perform the duties of custodian. He was charged with the duty of "receiving, holding, preserving and dealing with such property as might be paid to or vested in him in pursuance of the act." The courts were empowered to vest in the custodian any property, real or personal, belonging to

¹ For figures on the value of such holdings, see Clunet, *Journal du Droit International*, 1915, p. 286, 1917, p. 496; *Strasburger Post*, July 18, 28, 1917, in *Facts about the War*, Paris Chamber of Commerce, August, 1917. See, also, Eccard, *Biens et Intérêts Français en Allemagne*, 1917, pp. 26-27, and Bruneau, *l'Allemagne en France*, 1914.

or held or managed for or on behalf of any enemy, whenever they were satisfied that such disposition was expedient. All such property was declared to be exempt from attachment or seizure in execution of a judgment, although the custodian was allowed to pay debts due British subjects from the income thereof, if so ordered by the courts.² Subject to this exception, the custodian was to hold all property placed in his custody until the end of the war, for the benefit of its owners, provided their own governments accorded reciprocity of treatment to British subjects. The custodian was further empowered to place on deposit with any bank, or to invest in any securities approved by the Treasury, any moneys paid over to or received by him in pursuance of the Act, and any dividends or interest received on account of such deposits or investments were to be dealt with in such manner as the Treasury might direct. Any sum which, had a state of war not supervened, would have been payable to or for the benefit of an enemy subject in the form of dividends, interest or profits, was to be paid to the custodian and not to the enemy claimant. All holders of enemy property and all managers of companies in which enemy aliens held an interest were required to furnish the custodian within one month full particulars concerning all shares, stocks, and interests held by enemy aliens in such property or companies. Creditors of enemy aliens and persons entitled to recover damages against an enemy alien were authorized to make application to the High Court for an order empowering the custodian to sell or otherwise dispose of the property of any enemy alien against which a British subject might have such a claim. The transfer by an enemy alien of any securities, debts, bills, notes or obligations, after the outbreak of war, was declared to be illegal, unless they were *bona fide* transactions and made for value received before November 19th.³

² In the case of *Krupp Aktien Gesellschaft* (1916 W. N. 234), Mr. Justice Younger held that British creditors of enemy aliens were not entitled to interest on such debts. Thereupon the rules issued in pursuance of the Act were promptly amended so as to allow interest in such cases. *Solicitors' Journal*, Vol. 60, p. 534; *Law Times*, July 1, 1916, pp. 150-151.

³ Text of the Act in Pulling's Manual of Emergency Legislation, Supp. II, pp. 19-27, and Baty and Morgan, War, Its Conduct and Legal Results, pp. 512-523.

The Controller. With a view to insuring the carrying on of enemy enterprises whenever the public interest so required, the Trading with the Enemy Act of September 18, 1914, authorized the Board of Trade, whenever it had reason to believe that the management of any business by an enemy alien or company was likely to be so affected by the war as to prejudice its continuance, but the carrying on of which was demanded by the public interest, to apply to the courts for the appointment of a controller of the firm or company, the said controller to have the power of a receiver or manager, subject to such restrictions as the court might think fit. By an act of January 27, 1916, the powers of the controller were extended to those of a liquidator, including the power to pay debts, distribute assets, etc.,⁴ and the Board of Trade was empowered, whenever it appeared that the business of any person, firm or company was by reason of its enemy nationality or the nationality of its members being carried on wholly or mainly for the benefit of or was under the control of enemy subjects, to prohibit or wind up such business.⁵ Already by a proclamation of August 10, 1914, enemy aliens had been prohibited from engaging in the business of banking, except with the written permission of a Secretary of State and subject to such conditions and restrictions as he might prescribe. The proclamation further prohibited enemy alien banks from parting with any money or securities, but required them to deposit the same in such custody as they might be directed. The power conferred on the Board of Trade by the Act of January 27, 1916, was freely exercised and hundreds of enemy companies and business enterprises were closed and large quantities of German-owned property also appear to have been sold at auction by the public trustee.

⁴ His powers were judicially interpreted in the case of *Hazelberg Aktien Gesellschaft*, W. N. (1916), and are analyzed in the *Law Times* of November 4, 1916, pp. 141-142.

⁵ It will be noted that no application to the courts for an order to wind up such business was required. This feature of the law is criticized by the *Solicitors' Journal and Weekly Reporter*, Vol. 60, p. 216. See also the *Law Quarterly Review*, Vol. 32, p. 249.

B. IN FRANCE

Basis of French Policy. French policy in respect to enemy property and business enterprises was similar in principle to that of the British Government. The decree of September 27, 1914, which corresponds to the British Trading with the Enemy Act, made no provision for placing enemy property under the control of a public custodian nor for putting the management of enemy business enterprises in the hands of a controller. Nevertheless, it was assumed at the outset that the government must exercise control over all such property and enterprises in the interest of both the national defense and the maintenance of the economic life of the nation.⁶ Moreover, such a policy was justified as a legitimate measure of retaliation against Germany for having closed her courts to French citizens and for having placed certain French houses in Germany under sequestration.⁷ In France, proceedings against enemy property and business enterprises were initiated, not by Parliament, but by the courts in the exercise of their common law jurisdiction,⁸ although regulations were issued by the government from time to time for the guidance of the courts and the parquets in exercising their powers of control.⁹

⁶ Compare Valéry, "*De la Condition en France des Ressortissants des Puissances Ennemis*," *Revue Générale de Droit International Public*, 1916, pp. 374 ff., and Clunet, *Journal du Droit International*, 1916, p. 7.

⁷ See Valéry, article cited, who emphasizes the character of the French measures as a legitimate act of reprisal for the German pillage and confiscation of private property in France; also Fauchille, *Les Attentats Allemands contre les Biens et contre les Personnes en Belgique et en France*, *ibid.*, 1915, pp. 257 ff., and Reulos, *Manuel des Séquestres*, p. 2. In fact, however, the German Government had only excluded from access to its courts enemy subjects domiciled outside the Empire. Frenchmen domiciled within the Empire were free to sue in the German courts.

⁸ The Germans complained that the policy of sequestration adopted by the French courts was illegal, but Reulos (*Les Séquestres et la Gestion des Biens des Sujets Ennemis en France*, Clunet, 1917, pp. 24 ff.), shows that this policy was entirely in accord with the established practice of the French courts in dealing with abandoned property or property held by persons who for reasons of public policy should not be left in control of it.

⁹ The various circulars and decrees relating to the matter may be found in Reulos, *Manuel des Séquestres*; Dalloz, *Guerre de 1917*; and a collection entitled *Législation de la Guerre de 1914* (*Librairie de Soc. du Recueil Sirey*). See also Signorel, *Le Statut des Sujets Ennemis* (1916), pp. 128 ff.

Appointment of Sequestrators. With the departure from France of a considerable number of German and Austro-Hungarian subjects at the outbreak of the war and the abandonment of their property, French creditors applied to the courts for the appointment of *administrateurs-séquestrateurs* of the property thus abandoned with a view to insuring its conservation and the ultimate recovery therefrom of the sums due them. Likewise the *parquets* took the initiative in applying to the courts for writs of attachment of goods and merchandise belonging to enemy houses of trade, irrespective of whether the owners were in France or had departed. The first court to act upon such applications was the Civil Tribunal at Havre, which on October 2, 1914, issued an order for the seizure of the merchandise belonging to a German house in that city,¹⁰ this partly for the purpose of preventing it from finding its way to the enemy and partly upon grounds of general public policy.¹¹ This mode of procedure in respect to enemy property commended itself to the Minister of Justice, and on October 8th he communicated the text of the decision of the Tribunal of Havre to the various *parquets* with the suggestion that, as it seemed to be of such a nature as to "constitute jurisprudence," it be brought to the attention of the presidents of the tribunals and the procurators of their districts.¹² By a circular of October 13th, M. Briand, then Minister of Justice, went further and "invited" the presidents of the Court of Appeal and the procurators-general thereof to proceed to seize and to put under sequestration all goods and merchandise, all funds (*deniers*), and generally all movable and immovable property belonging to or held by or for any German or Austro-Hungarian houses of trade, industry or agriculture in France, whether those houses had ceased or not their operations since the outbreak of the war.¹³ They were admonished not to allow any such

¹⁰ Text in Reulos, pp. 42-43, and Clunet, 1915, pp. 419 ff.

¹¹ Troimaux, *Séquestres et Séquestrés*, p. 3.

¹² Text in Reulos, pp. 41-42.

¹³ The law of January 22, 1916, provided that French holders or managers of enemy property should upon their request be considered as sequestrators of the property in their possession, and such property should be regarded as under their care. They were "sequestrators by law" as contra-distinguished from "judicial sequestrators" who were appointed by the courts.

house to escape, and to that end they were urged to seek all information possible from the prefects, municipal authorities and commissioners of police, as well as chambers of commerce and other public or quasi-public bodies. At the same time they were admonished not to forget that they were acting in the name and as the representative of the public interest, the safe-guarding of which must be their first consideration.¹⁴ Other circulars were addressed to the prefects directing them to give their full co-operation to the judicial authorities, and especially to furnish them with information regarding enemy establishments in their departments,¹⁵ and to the procurators directing them to take the initiative in requesting the courts to appoint *administrateurs-séquestrateurs* of property and houses of trade belonging to German and Austro-Hungarian subjects.¹⁶

For certain reasons of public policy, natives of Alsace-Lorraine, Poles and Czechs were often in fact exempted from the operation of the sequestration measures.¹⁷ The whole matter of the treatment of persons belonging to these races was left to the discretion of the courts. In each case an effort was made to distinguish between the "desirables" and the "undesirables," the former being exempted.¹⁸ The possession of a *permis de séjour* was usually accepted as a presumption that the holder belonged to the first category. Likewise, the policy of sequestration does not appear to have been rigorously enforced against the property of certain Ottoman subjects, notably Syrians. As the sequestration measures applied to the property of all persons residing or domiciled in Germany and Austria-Hungary, it happened that property in France owned by a Frenchman residing in Germany was subject to sequestration. The Tribunal of the Seine also held that the property of naturalized Frenchmen of German origin who had left France and returned to Germany at the outbreak of the war was subject to sequestration even before their denaturalization by the French Government had been pronounced.¹⁹

¹⁴ Text in Reulos, pp. 44-45.

¹⁵ *Ibid.*, p. 46.

¹⁶ Text in Reulos, pp. 47-48.

¹⁷ See a circular of the Minister of Justice of October 14, 1914.

¹⁸ See Troimaux, pp. 87 ff. and 105 ff.

¹⁹ Reulos, p. 231.

Compulsory Declaration of Enemy Property. By a law of January 22, 1916, all holders, administrators, guardians or surveillants of property belonging to the subjects of an enemy Power, and all debtors of enemy subjects, were required to make a detailed declaration concerning the amount and character of such property or debts. The obligation applied to all interests of whatever character held by enemy subjects in houses of trade, enterprises or exploitations, as well as all agreements or contracts of an economic character between persons residing in French territory and subjects of an enemy Power. The declarations were to be made to the procurators and officials of the judicial police, and failure to do so within the prescribed period was punishable by imprisonment of from one to five years and by a fine of from 500 to 20,000 francs.²⁰

Powers of the Sequestrators. The functions of the *administrateurs-séquestrateurs* were in principle similar to those of the English custodian. Again and again the Minister of Justice, in the circulars which he issued for their guidance, reminded them that their rôle was mainly that of conservators.²¹ They were merely the guardians and custodians of the property placed in their charge and were to hold and preserve it as an "economic hostage" until the end of the war, with a view to protecting the eventual rights of French creditors and those of the allies of France and of neutral countries, and also to prevent its being used to the prejudice of the national defense. The income of the property held by them was to be received, and out of it the debts due by the owners to French creditors were to be paid. The remainder was to be deposited in the public treasury. Unlike the English controller, they had no general power to operate, or wind up the affairs of business concerns.²² Nevertheless, whenever

²⁰ See Reulos, pp. 32 ff., for the text. See Troimaux, pp. 147 ff., for a discussion of the nature and purposes of the law. Troimaux details some of the ingenious ruses adopted by German houses and property owners to avoid the sequestration measures (pp. 117 ff.).

²¹ This restricted view of their powers was affirmed by the French courts in many cases. Many of these decisions may be found in the *Journal du Droit International*, edited by M. Clunet, in Reulos, *op. cit.*, Part III, and in Troimaux, *op. cit.*, pp. 55 ff. The two latter treatises contain analyses and comment on the French decisions.

²² Decision of the Tribunal of Oran, Clunet, 1916, p. 967.

the public interest required the closing of an enemy enterprise or its continued operation for the manufacture or production of commodities needed for military or other purposes, the courts might direct that one or the other policy be followed; in the former case the court appointed a liquidator, and in the latter an *administrator-sequestrator* to carry on the business.²³ In France, therefore, contrary to English procedure, no enemy business could be closed and its affairs wound up except by an order of the court. Likewise, except in case of absolute necessity, as, for example, where the sequestered goods were perishable or were subject to debts or other incumbrances which required to be discharged immediately, or where military or economic considerations made it imperative or highly desirable, the assets of property in the hands of a sequestrator could not be alienated, sold or otherwise disposed of except upon an order of the court.²⁴ Sequestrators were required to keep accounts of the receipts and expenditures and make detailed reports to the courts, to whose control their activities were largely subject. They were admonished to exercise care and economy in the discharge of their duties and to use every effort to preserve the property in the same condition in which they received it. All dividends or other income from sequestered property were required to be paid over to the *Caisse des Dépôts et Consignations* to be held by it for the eventual benefit of the owners, and no proceeds from enemy property were employed in France for subscriptions to war loans, as was done in Germany and the United States. The expense entailed by the administration of the sequestration policy was borne by the property sequestered. The Germans alleged that this expense was so large as to consume in many cases the larger part of the property, but this charge was denied by the French authorities, who assert that there was practically no expense, except registration fees in case of sales.²⁵

The rigor of the sequestration measures was often relaxed in exceptional cases. Thus, by a circular of the Minister of Justice of

²³ Circular of the Minister of Justice, November 3, 1914. Text in Reulos, pp. 63 ff.

²⁴ Circular of November 14, 1914, Reulos, pp. 74 ff.

²⁵ Reulos, 1915, p. 1078.

December 3, 1914, addressed to the procurators-general, he directed them to make derogations from the general principle in the case of simple enemy individuals when no consideration of public policy nor the national defense would be subserved by the sequestration of their goods. No such purpose would be subserved, for example, by sequestrating the trade or industry of a petty shop-keeper or producer whose commodities served exclusively for the subsistence of himself and his family. So with regard to the business and property of enemy subjects whose sons were fighting in the French armies, it would be harsh to subject them to the regime of sequestration. In all such cases the judicial authorities were to exercise their discretion and to act with prudence and with due consideration for the national interests.²⁶

Status of Mixed Companies. In the enforcement of the policy of sequestration of enemy property and business enterprises, no little difficulty was encountered in determining the status of mixed companies and partnerships. In his circular of October 13, 1914, M. Briand, notifying the presidents and procurators-general of the Courts of Appeal that they must put under sequestration the property of enemy houses, directed them to apply the measure equally to houses which dissimulated their real character by taking the form of a French company having its headquarters in France and organized under French law, even when as many as one-third of the shareholders or partners were of French, allied or neutral nationality. In a circular of October 25th, he directed that only the interests held by German or Austro-Hungarian subjects in such houses should be put under sequestration and that in such cases some French, allied or neutral member of the firm should be appointed sequestrator. But if it appeared necessary to insure a strict enforcement of the decree of September 27th regarding trade with the enemy, the company might be dissolved and a liquidator appointed. As to this necessity, however, the judicial authorities were to have full discretion.²⁷ In practice, it appears that the entire property of companies, all or a majority of whose shareholders were

²⁶ Text in Reulos, pp. 100 ff.

²⁷ Reulos, p. 51.

of enemy nationality, was put under sequestration, but as to those in which they constituted a minority only, the proportion representing the enemy interests was sequestered.²⁸

C. IN GERMANY

Early German Policy. As has been said, the French Government justified its policy of sequestration partly upon considerations of national defense, partly as a necessary measure for the protection of French creditors and the maintenance of the economic life of the nation, and partly as a legitimate act of retaliation for the German decree of August 7, 1914, excluding French nationals and establishments domiciled outside the Empire from access to the German courts.²⁹ The French measures of sequestration, as well as those of the British Government, aroused strong resentment in Germany, where they were denounced as a violation of the law of nations which establishes the immunity of private property in land warfare.³⁰ By way of reprisal³¹ (*im wege Vergeltung*), therefore, the German *Bundesrath* adopted an ordinance on September 4, 1914, empowering

²⁸ See, e.g., the decision of the *Cour de Paris* of February 27, 1917, Clunet, 1917, p. 1457.

²⁹ The French text of the German decree of August 7th may be found in Reulos, p. 478. The French seem to have been under the impression that the German decree closed the German courts to all Frenchmen whether domiciled within or without the Empire. In fact, as stated above, it applied only to those domiciled *outside* the Empire.

³⁰ See the *Norddeutsche Zeitung* of November 30, 1914. The same paper, in its issue of April 14, 1917, published an official notice which complained that from the outset the French had sequestered not only the property of German commercial enterprises, but also the goods of private individuals; that the French policy was ruinous and wasteful, and that important enterprises in which Germans held an interest had been put up for sale in a lump and sold to the French partners at nominal prices. M. Reulos, in *Clunet's Journal*, 1917, pp. 26 ff., denies the German charges.

The above and other similar charges in respect to the treatment of German property in France are made by Hans Reichel, of Zurich, in the *Juristische Wochenschrift* of Berlin for May 1, 1915, p. 471. There is a French translation of his article in Clunet, 1917, pp. 489 ff., by M. Dreyfus, who likewise denies the German charges.

³¹ In view of the fact, however, that the French policy of sequestration was not inaugurated until October, 1914, it is difficult to see how the German ordinance of September 4th can be defended as an act of reprisal against the French

(but not requiring) the central authorities of the several states of the Empire to establish a regime of supervision over enemy enterprises (*unternehmungen*) situated within their respective territories, including all the branches of enemy houses which were directed or controlled by persons of enemy nationality or the funds of which were destined for transmission to enemy countries. This supervision was to be exercised by *surveillants* or supervisors (*aufsicht personen*) appointed by the government and at the expense of the enterprise. They were to see that no business was carried on during the war by such enterprises, but the property and other private rights of the enterprise were not to be impaired. Supervisors, therefore, had no power to liquidate or wind up its affairs or to manage or operate it. The exploitation of the enterprise might be carried on as before the war, but its directors and employees were required to conform to the rules and decisions of the supervisors. The supervisor was given power to control the transactions of the undertaking, especially those involving the disposition of property and the transmission of communications; to inspect papers; audit accounts; make inventories and require information regarding the transactions. No money nor other property of an undertaking placed under supervision could in general be transmitted to an enemy country, but the supervisor was authorized to make exceptions to this rule in appropriate cases. He might also direct that such money or securities be deposited in the Imperial Bank to the credit of the enterprise. Violation of the terms of the decree was punishable by a fine not exceeding 50,000 marks or imprisonment not exceeding three years or both.³²

measures of sequestration. Compare an article entitled *Les Séquestres des Biens des Sujets Ennemis en Allemagne*, Clunet, 1916, pp. 1546 ff., and an article by Reulos, *ibid.*, 1917, pp. 26 ff.

³² The text of this and other decrees, laws, circulars of instruction, etc., may be found in a German collection entitled *Die Kriegs Notgesetze, Sammlung der Wichtigen Gesetze, Verordnungen und Erlasse*, published by Carl Heyman, Berlin. See Vol. I, pp. 137-139, for the text of the above decree. The French text of this and other decrees relating to the treatment of enemy property in Germany may be found in Reulos, *op. cit.*, pp. 478 ff. See also Clunet, 1917, pp. 77-8, and Ecard, *Biens et Intérêts Français*.

The number of decrees and circulars issued by the German Government in

Adoption of the Policy of Compulsory Administration of Enemy Enterprises. By an ordinance of October 22, 1914, establishments or branch houses which had been placed under supervision in pursuance of the above-mentioned decree and which did not have in Germany a head or agent qualified to perform legal acts in respect to such establishments or branch houses, were placed under a regime of compulsory administration (*zwangsweiserverwaltung*). For each such enterprise a manager (*verwalter*) was to be appointed by the court of first instance (*amtsgericht*) upon the nomination of the supervisor. He was empowered to manage, subject to the direction of the supervisor, the affairs of the enterprise and to exercise all the powers of the owner or his agent. During the period of forced administration, the owner or his agents were disqualified from performing any legal acts in connection with the business.³³ By an ordinance of November 26, 1914, the *Bundesrath* went still further and, by way of reprisal, authorized (but did not require) the central administrative authorities of the states, with the assent of the Chancellor, to place under the regime of forced administration all enterprises as well as their branches, and all immovable property owned wholly or in preponderating part by persons of French nationality.³⁴ An administrator (not necessarily a public functionary) appointed

respect to enemy property and enterprises was very large. Clunet (1917, p. 385) gives a list of seventeen such decrees and ordinances. An analysis of the more important of them may be found in Senate Document No. 107, 65th Cong. 1st sess., entitled "Trading with the Enemy," by Theo. H. Thiesing, of the Library of Congress.

³³ German text in *Die Kriegs Notgesetze*, Zweites heft, p. 1; French text in Reulos, p. 486, Eccard, p. 238 and Clunet, 1915, pp. 80-81; 1916, p. 324; and 1917, pp. 266 ff. German creditors of enemy subjects were entitled to institute proceedings in the courts by way of execution against property belonging to the latter and which had been placed under sequestration. See a decision of the *Oberlandesgericht* of Colmar, May 12, 1915, Soergel, *Kriegsrechtsprechung und Kriegsrechtslehre*, p. 115, and a decision of the *Landgericht* of Berlin, March 22, 1915, *ibid.*, p. 115. Controllers of enemy firms could sue in the name of the firm in respect to its affairs. *Ibid.*, p. 206. As to the powers of managers of enemy firms, see a decision of the Prussian *Kammergericht* in May, 1916, text in Clunet, 1917, pp. 266 ff.; also Clunet, 1917, pp. 480 ff.

³⁴ It will be seen that enemy interest, and not the domicile of the French shareholders or partners, was made the test. It was immaterial whether the latter had their domicile in German, enemy or neutral territory.

by the government was to be put in control of the enterprise or property, with almost absolute authority, to act in the name of the owner or manager. He alone could sue in the name of the enterprise and could remove and appoint directors and employees. He could operate the enterprise permanently or temporarily with a view to winding up its affairs. Upon the request of a German shareholder or partner, and with the approval of the state authorities, he could proceed to dissolve the company or partnership and liquidate its affairs, in which case a liquidator appointed by him was put in control.³⁵ The latter could alienate the property wholly or in part, pay its debts and deposit the balance with the government. The state authorities were authorized to permit payments to enemy owners and partners domiciled in Germany so far as necessary for their support. During the period of sequestration all powers and rights of the directors, shareholders and partners were suspended. The expense of administration was to be paid out of the assets or income of the business. If after liquidation any balance remained the amount due French subjects was to be deposited in the Imperial Bank to their account.³⁶

Following British and French practice, the German Government, by a decree of October 7, 1915, required an obligatory declaration in respect to all enemy property, including shares of stock and

³⁵ French writers have complained of the German procedure of dissolving mixed companies, a majority of the stock of which was owned by French partners, this upon the request of a single German partner. See the opinion of the Hamburg *Landgericht* of July 1, 1915, in Soergel, *Kriegsrechtsprechung und Kriegsrechtslehre*, p. 25, where a house of trade composed of three partners, of whom two were English and the third German, was dissolved upon the petition of the German partner. The Tribunal of the Seine declined to order a dissolution in a similar case. Reulos, *La Séquestration et la Gestion des Biens des Sujets Ennemis en France*, Clunet, 1917, pp. 38-39. See also an article from the Berlin *Tageblatt* of August 18, 1916. (French translation in Clunet, 1917, p. 492.)

³⁶ Text in *Kriegs Notgesetze*, Heft 2, p. 3. A detailed analysis of the above-mentioned ordinances, with general comment on the German policy in respect to the treatment of enemy property, may be found in a series of articles entitled *Régime Juridique des Biens Ennemis en Allemagne* in Clunet, 1917, pp. 385 ff. and 875 ff., by Giesker-Zeller of Zurich. There is also a review and defense of German policy in an article by Dr. Haber, of Leipzig, in the *Juristische Wochenschrift* of April 15, 1916. (French translation in Clunet, 1916, pp. 448 ff.)

claims against persons domiciled in the Empire. The declaration was required to be made by the owner or holder to such officials as the state governments might designate. Heavy penalties were prescribed for failure to make the required declaration or for false and inexact returns.³⁷ Although in terms this ordinance applied only to French enterprises, the Chancellor was authorized by section 9 to extend by way of reprisal its provisions to the subjects of other enemy states, and in fact they were so extended to apply to the subjects of Great Britain, Russia, Portugal, Italy, Roumania, and the United States. By an ordinance of July 31, 1916, issued by the *Bundesrath*, the Chancellor was authorized to order the liquidation of all enterprises or branch houses whose capital was owned wholly or in major part by English subjects, or which were until the outbreak of the war directed or supervised from places within British territory. The procedure of liquidation and the function of liquidators were essentially the same as those of the ordinance of November 26, 1914, relating to the liquidation of French concerns.³⁸

German Sequestration Measures in Belgium. By a decree of the Governor-General of Belgium of February 17, 1915, enemy houses and branches of enemy houses were placed under the regime of compulsory administration. Embraced within this category were those whose directors or managers were subjects of enemy countries, those one-third of the capital, property or direction of which were in enemy hands, those whose principal business was in enemy territory, those the management of which by Germans was required by the interests of Germany, and those whose exploitation was calculated to affect injuriously the interests of the German Empire. Administrators were to be appointed by the Commissioner-General of Banks and they were to take the place and perform the duties of the existing directors, the rights of owners, agents and directors being suspended during the period of sequestration. All expense of administration, including the salaries of the sequestrators, was to be borne by the house or

³⁷ French text in Clunet, 1917, pp. 1523 ff.

³⁸ Text in Reulos, pp. 491-3, and Eccard, pp. 261-263. In November, 1917, the provisions of this decree were extended to apply to the property and claims of American citizens.

business sequestrated.³⁹ By a decree of August 29, 1916, the Governor-General directed that any British concern of which the greater part of the capital belonged to British subjects, or whose directorate or management had its headquarters in British territory, might be liquidated and its affairs wound up. The power to order the liquidation of a concern was conferred on the chief civil administrator (*verwaltungschef*) and the Commissioner-General of Banks, but their orders were subject to the approval of the Governor-General. The liquidator was empowered to take possession of the concern and might alienate it *en bloc* or sell particular shares. The offense of secreting or concealing property subject to liquidation, or of furnishing false information, was punishable by a fine not exceeding 100,000 marks and imprisonment of not more than 5 years, or both, and the military courts were given jurisdiction of infractions of the decree.⁴⁰ The measure appears to have been one of confiscation, and it was characterized by the British Secretary of State for Foreign Affairs as "a violation of the principles of international law." The Secretary of State also stated that he had received reliable information that the German Government had ordered certain establishments to hand over to the *Reichsbank* the balances of current accounts standing in the names of French and British nationals.⁴¹

German, British and French Policy Compared. Comparing German policy in respect to the treatment of enemy property with that of Great Britain and France, we must admit that, in the beginning, at any rate, it was more liberal and more in accord with Rousseau's theory that war is a contest between armies and not peoples.⁴² German writers claim that Germany was driven to adopt the policy

³⁹ Text of the decree in Clunet, 1916, pp. 682-684; in Huberich and Speyer, *German Legislation in the Occupied Territories of Belgium*, 2nd series, pp. 98-100; and in Eccard, *op. cit.*, pp. 247-249.

⁴⁰ Text in *Bulletin Officiel des Lois et Arrêts*, September 13, 1916. English translation in *New York Times*, November 14, 1916.

⁴¹ *International Law Notes*, May, 1917, p. 73.

⁴² In this connection, attention may be called to a decision rendered by the *Reichsgericht* on October 26, 1914, which said: "The German law of nations does not admit the view of certain foreign codes according to which war from the economic point of view must be extended to the subjects of the enemy states. It starts from the contrary principle that war is made solely against the enemy

of compulsory administration and liquidation as a measure of reprisal against France for putting German enterprises and property under sequestration. France, they contend, was not justified in resorting to this extreme measure because the German Government had temporarily closed its courts to Frenchmen domiciled outside the Empire. As a matter of fact, they assert, the courts were open practically without restriction to all enemy subjects domiciled in German territory. In the beginning, Germany took no action whatever against enemy property or business undertakings, and even after it was known in Germany that the French courts were proceeding to sequester German property and houses of trade, the Germans went no further than to place French undertakings under supervision. Unlike the French measures, it was said, this policy of surveillance did not generally prohibit the carrying on by their owners or agents of French business enterprises in German territory. The official supervisors under whose oversight these enterprises were placed were limited mainly to seeing that the business was not operated to the detriment of the national interests. There was no seizure of enemy goods and no serious interference with the management of enemy houses of trade or business undertakings. It was only after the French policy of wholesale sequestration had been adopted and put into effect that Germany felt obliged as a measure of reprisal to resort to a similar policy, as she did by the decree of November 26, 1914.⁴³

state as such and that the subjects of an enemy state are assimilated from the civil point of view to nationals in the same measure as they were before the war, except in so far as otherwise exceptionally provided for by law." The court admitted, however, that this principle might be derogated from by exception as a measure of reprisal. Text in Soergel, *Rechtssprechung*, p. 75; also quoted by Curti, in an article entitled *De la Condition des Sujets Ennemis selon la Législation et la Jurisprudence Allemandes*, in *Clunet*, 1915, pp. 785 ff. See also *Clunet*, 1916, p. 1131, and 1917, p. 456.

⁴³ Commenting on the German legislation in respect to the treatment of enemy aliens, an English writer in the *Journal of the Society of Comparative Legislation* (January, 1915, p. 54), remarks: "Suffice it to say that the emergency provisions taken as a whole are creditable to Germany and its jurisprudence. They exhibit no spirit of vindictiveness. If there is retaliation, it is only resorted to where the rights conceded by Germany are refused by us. The disabilities and prohibitions, in a word, are no more than reasonable safeguards which a belligerent may exact in the presence of this hideous anomaly—War."

Having once inaugurated the *régime* of compulsory administration, the Germans appear to have carried it out with their usual thoroughness. Loud complaints were made in France that the German measures against French houses and property were arbitrary, wasteful, confiscatory and entirely unjustified by anything the French had done. German administrators, it was pointed out, were neither appointed by nor subject to the control of the courts, as were the sequestrators in France; consequently, they were free to deal with enemy property and enterprises as they pleased. The French policy of sequestration, it was said, had been adopted mainly with a view to conserving enemy property from waste or destruction and for preventing its use for the benefit of the enemy; in Germany, on the contrary, the policy of forced administration was resorted to as a weapon of war; it had the character of spoliation, and in the case of Belgium in particular it amounted in effect to confiscation.⁴⁴ German policy in respect to French property and enterprises in Alsace-Lorraine especially has been the subject of severe criticism by French writers. German administrators were put in control of thousands of French houses and other enterprises; many of them were wound up and their affairs liquidated, and charges were made that their funds in some cases were used by the German authorities for forced subscriptions to war loans.⁴⁵ Liquidations and forced sales appear to have greatly multiplied under the administration of Chancellor von Hertling, and throughout the autumn of 1917 the columns of German newspapers were filled with advertisements of the sales of French houses and estates. These measures, it is alleged, were applied not only to French nationals, but also to German subjects in Alsace-Lorraine whose sons had emigrated to France or were serving in the French army, and to Alsatian families who were "affiliated" with individuals or families of French nationality. This policy of spoliation and confiscation, for such it was in effect, was at first defended as a legitimate measure of reprisal, but in consequence of the refusal of the French Government to resort to the policy of

⁴⁴ The character of German and French measures is contrasted in M. Ecard's *Biens et Intérêts Français en Allemagne et en Alsace-Lorraine* (1917).

⁴⁵ Clunet, 1915, pp. 1078-1079; 1916, p. 1547.

confiscation, the German authorities ceased to invoke the excuse of reprisal, and defended the German policy on the ground that it was in the "interests of the Empire."⁴⁶

D. IN THE UNITED STATES

Policy in Respect to Business. The policy of the United States followed the general lines adopted in Great Britain and France, although there were some important differences. The legislation in respect to the treatment of enemy business undertakings and property is for the most part found in the Trading with the Enemy Act of October 6, 1917, and in the various executive orders issued by the President in pursuance of the authority conferred upon him by this act.⁴⁷ In respect to the conduct of enemy business in the United States, the Act empowered every enemy or ally of enemy insurance company and every enemy or ally of enemy doing business in the United States through an agency or branch office or otherwise, to apply to the President of the United States for a license to continue the said business. The President was authorized to grant or refuse licenses and to revoke those once granted in his discretion. The power thus conferred on the President was in turn delegated by him to the War Trade Board.⁴⁸

The license thus authorized might specify the conditions under which the business should be carried on and prescribe regulations for the control and disposition of the company's funds. The President was further empowered to prohibit any or all foreign insurance companies from doing business in the United States whenever in his opinion the public safety or public interest might require.⁴⁹ No

⁴⁶ New York Times, October 22, 1917.

⁴⁷ Printed in Supplement to this JOURNAL, January, 1918.

⁴⁸ Whenever the board refused to grant a license, the Alien Property Custodian took charge of the business and managed, operated or liquidated its affairs. A large number of licenses appear to have been granted with a view to liquidation under the management and control of the Custodian. The power to license insurance companies was delegated by the President to the Treasury Department.

⁴⁹ This power was delegated by the President to the Treasury Department and in pursuance of this authority an order was issued by the Department on November 26, 1917, prohibiting all enemy and ally of enemy insurance companies,

provision was made for the appointment of controllers, managers, administrators, sequestrators, and the like, as was done in other countries. Instead of following the German policy of compulsory administration through the agency of a government appointed administrator, American policy was to require a reorganization of the directorate in the case of enterprises in which the board of directors was composed wholly or in part of enemy subjects. In such cases the Alien Property Custodian took possession of the enemy interests in the enterprise and appointed directors to represent such interests, or an entirely new board in case the business was wholly enemy-owned, and the board as thus reorganized carried on the business as before.⁵⁰

By an executive order issued by the President on February 26, 1918, prescribing rules and regulations concerning the duties of the Custodian, the latter, however, was authorized to "manage, conduct and operate" any enemy business wherever its continuation "seemed to be necessary to prevent waste or to protect such business," and in the management, conduct or operation of such business he was authorized to exercise "every right, power and authority of the enemy."⁵¹

Policy in Respect to Property. As to the treatment of enemy-owned property in the United States, the Trading with the Enemy

except those engaged in the business of life insurance, from doing business in the United States. Life insurance companies were permitted to carry out their existing contracts, but were forbidden to write new business. The affairs of all others were wound up and liquidated. By an executive order of November 12, 1918, the Custodian was given authority to take over the assets and affairs of all enemy insurance companies then in the process of liquidation. It was announced that their stock would be sold at public auction. Already, on July 14, 1917, the President had issued a proclamation prohibiting companies engaged in the business of marine and war risk insurance from continuing their business, and declaring that their existing contracts should be suspended during the period of the war. The purpose of the measure was to prevent information regarding the movement of American vessels from reaching Germany through the agents of such companies, who had a right to inspect all vessels upon which they carried insurance.

⁵⁰ See a report of the Custodian to the President, in the *Official Bulletin*, January 26, 1918.

⁵¹ Text of the order in the *Official Bulletin*, March, 1918.

Act authorized the President to appoint an "Alien Property Custodian," with power to receive all money and other property in the United States due or belonging to an enemy or ally of an enemy, which might be paid, conveyed, transferred, assigned or delivered to him, and to hold, administer and account for the same under the general direction of the President.⁵² Every corporation and every unincorporated association, company, or trustee, issuing shares or certificates representing beneficial interests was required within sixty days to transmit to the Custodian a list of the officers, directors or stockholders of enemy or allied nationality residing within or without the United States, of such corporation or company, together with a statement of the amount of their holdings. All persons holding property for or on behalf of an enemy or ally of an enemy, or indebted to such person, were required to report the fact within thirty days to the Custodian with such particulars as the latter officer might require, and the President was empowered to require any money or other property due or belonging to an enemy or ally of an enemy not holding a license, to be paid over to and delivered to the Custodian. Any payment, conveyance or delivery of money or other property to the Custodian was to be a full acquittance and discharge of the obligation of the person making it. The Custodian

⁵² The law was interpreted to apply to property in the United States owned or controlled by any and all persons residing or domiciled in the territory of the enemy or ally of an enemy, even when the owner was an American citizen. In a number of instances vast properties owned by American citizens of German origin, who at the time were in Germany, were taken over by the Custodian. Likewise, the property holdings of a number of wealthy American women who had married German or Austrian subjects were taken over. In the former case, the domicile of the owner was taken as the test of the liability of his property to sequestration; in the latter case the citizenship of the owner was made the test.

By an executive order of February 5, 1918, German and Austro-Hungarian subjects who had been interned and were in the custody of the War Department were declared to be "enemies" within the sense of the Trading with the Enemy Act. Their property was therefore subject to seizure by the Alien Property Custodian. By an executive order of May 31, 1918, the Custodian was authorized to take over property in the United States of enemies interned in England and France, of persons who since April 6 were guilty of disseminating enemy propaganda, of persons whose names were on the enemy trading list, and of persons who at any time since April 4, 1914, had been resident within enemy territory.

was required to deposit in the Treasury of the United States all moneys paid to or received by him, and the Secretary of the Treasury was authorized to invest the same in United States bonds or certificates of indebtedness under such regulations as the President might prescribe.^{52a} All other property placed in the hands of the Custodian was to be "safely held and administered" by him. The Custodian was vested with all the powers of a common law trustee in respect to property, other than money, placed in his possession, and subject to such rules and regulations as the President might prescribe; he was authorized to manage the same and might dispose of it by sale or otherwise, or exercise rights appurtenant thereto, including sale, whenever it was regarded as necessary to protect it, prevent waste, and safeguard the interests of the United States therein.

Comparing the powers of the American custodian with those of the corresponding official in England, France and Germany we note several differences. Compared with the English custodian, his powers were somewhat larger, since he was not limited to receiving enemy property vested in him by the courts, but could take possession without judicial authorization, and he had the power to wind up the affairs of any concern or estate in which an enemy subject had an interest, whereas in England the latter power belonged to the Board of Trade and not to the custodian. Unlike the French sequestrator, he was not subject to the control of the courts, except as any trustee is, but was under the supervision and direction of the President. On the whole, his powers appear to have been more like those of the German administrator (*Zwangs verwalter*).

Sale of Enemy Property. The Trading with the Enemy Act appears not to have intended to give the Custodian any general power to sell enemy property further than was necessary to protect it against waste and to preserve the interests of the United States in the same.⁵³ But by a clause in the Urgent Deficiency Bill, approved March 28, 1918, the Custodian was given a general power to sell

^{52a} Down to July 31, 1918, \$42,970,027 of such funds had been invested in Liberty Bonds (Off. Bul., August 6, 1918). The total amount of property taken over by the Custodian was valued at more than \$700,000,000.

⁵³ Sec. 12, paragraph 4.

any property in his custody, subject to the condition that it must be sold only to American citizens and in public to the highest bidder, unless the President should otherwise direct. By an executive order of April 2d, the President authorized the Custodian to sell at private sale and without advertisement a large number of articles of personal property. The policy of the Custodian was to sell only such articles as cotton, tobacco, grain, etc. The avowed purpose of the measure conferring upon the Custodian the general power of sale was to destroy the enormous financial power which had been built up in the United States by Germans resident in Germany, and to root out German influence.⁵⁴

During the debates in the Senate on the proposition to confer on the Custodian the general power to sell enemy property, the question was raised as to whether such action would not be in contravention of the treaty of 1799 between Prussia and the United States. Apparently the only provision of the treaty which has any bearing on the subject is Article 23, which allows the merchants of either country in the event of war a period of nine months to collect their debts and settle their affairs before departing with their effects. This period having expired on January 6, 1918, the freedom of departure allowed by Article 23 ceased to exist. The article, however, contained the further provision that various classes not comprehended in the category of "merchants" should be allowed to continue their respective employments and should not be "molested in their persons, nor should their houses or goods be burnt or otherwise destroyed, nor their fields wasted by the armed forces of the enemy into whose hands they may happen to fall; but if anything is taken from them for the use of such armed force, the same shall be paid for at a reasonable price." This treaty stipulation was, however, clearly inapplicable to property owned in the United States by persons residing or domiciled in Germany. It evidently had in mind the protection of peaceable noncombatant enemy aliens who remained in the United States after the outbreak of war, and not those who were abroad and engaged in carrying on war against the United States.

It does not in fact appear that the property of any German sub-

⁵⁴ Compare the *New York Times*, March 12, 1918.

ject residing in the United States not actually engaged in making war against the United States and not interned, was seized or sold.⁵⁵ Seizures and sales were in the main limited to property owned, not by enemy aliens residing in the United States, but by enemy subjects residing or domiciled in the enemy country and embracing such persons as the Emperor, the late Chancellor Bethmann Hollweg, and many capitalists belonging to the ruling class who held enormous property interests in the United States and who were actually engaged in making war against the government and people of the United States. It is not clear from the terms of the text or from the debates what was intended to be the eventual disposition of the proceeds from the sale of such property. If it was intended that the proceeds should be held in trust for the benefit of the owners, with whom an accounting should be made at the close of the war, the act is hardly open to criticism.^{55a} If, on the contrary, no such restitution is contemplated or intended, the measure is one of plain confiscation, and it is hard to see how it can be reconciled with the established rule of international law in respect to the immunity of private property in land warfare. Nevertheless, it might be argued, and was in fact argued during the debates in the Senate, that the confiscation of German-owned property in the United States was a justifiable measure of reprisal for Germany's conduct in destroying unlawfully the lives and property of American citizens on the high seas.

Apparently it was the intention of Congress that the whole question of restitution should be left for determination by the treaty of peace at the conclusion of the war, the idea being that a claim would

⁵⁵ In November, 1917, the Custodian gave public assurances in consequence of a report that heavy withdrawals by Austrians and Hungarians of their bank deposits were contemplated, that the government had no intention of seizing such funds and that there was no thought of confiscating or dissipating the property of enemy aliens residing in the United States. *New York Times*, November 14 and December 10, 1917.

^{55a} In June, 1918, the Custodian appeared before a committee of Congress and urged that title to enemy property should be vested in him in order that he might convey a clear title to property sold, and thus remove the possibility of its being returned to the original owners. But it does not appear that the authority was given.

be presented to Germany for damages on account of the unlawful destruction of American lives and property at sea by the German naval forces, and a balance struck between the amount so claimed and the amount of the proceeds derived from the sale of German-owned property in the United States. On this assumption, the seizure and sale of German-owned property in the United States by the American Government, severe and unprecedented as it may seem, can be justly defended. It was rather a measure of reprisal resorted to with a view to obtaining from the enemy's resources funds out of which to indemnify citizens of the United States for injuries and losses of life and property sustained by them in consequence of unlawful methods of warfare practiced by an enemy which refused to conform his operations to the recognized laws of war. As is well known, Germany at the close of the Franco-German War of 1870-71 demanded and secured an indemnity from France for certain acts which the German Government insisted were contrary to the established rules of international law. The Government of the United States may justly claim a like indemnity from Germany at the close of the present war, and if the justice of the claim is well established the sums derived by the Government of the United States from the sale of German property found within its jurisdiction may be justly applied to the payment of such indemnity. In that case it will be for the German Government to indemnify such of its subjects as have suffered losses, as the French Government indemnified its nationals under similar circumstances in 1871.

In the meantime the recourse of reprisal against the United States was open to Germany. The property of American citizens in Germany could have been seized and sold as German property in the United States has been seized and sold. In fact, the German Government in March, 1918, caused the American Government to be informed that it would adopt measures against American-owned property in Germany, similar to those taken by the Government of the United States against German property,⁵⁶ and in October it filed a

⁵⁶ *New York Times*, March 19, 1918. Already, in October, 1917, the German decrees in respect to compulsory notification and administration of enemy-owned property were extended to apply to American property in the Empire. New

formal protest against the American policy of selling German property and especially against the authority given the President to dispose of the North German Lloyd and Hamburg-American steamship establishments in New Jersey—this on the ground that it was in violation of the spirit of the treaties of 1785, 1799 and 1828.^{56a}

E. IN OTHER COUNTRIES

Hungary, Bulgaria, Roumania and Italy. In Hungary a law substantially the same as the German ordinance was passed relating to the supervision of business undertakings, and all persons were required to notify the Minister of Commerce of any debts due by them to persons residing in enemy territory. The Minister was authorized to forbid the payment of such debts or to require the amount to be deposited in the Austro-Hungarian bank.⁵⁷ It is not known to the author whether enemy property was placed under sequestration or forced administration as in Germany. The Bulgarian Government "in consequence of the bombardment by the Entente armies of Dedeagatch contrary to international law, and in the course of which numerous private houses were destroyed," is reported to have put under sequestration all French and English property as a security for the indemnification of Bulgarians who suffered from the bombardment. In September, 1916, it was announced that the Roumanian Government had decided to sequester all German capital in the country, including bonds of the Roumanian Government held by Berlin bankers, and amounting to some \$150,000,000. Aside from these bonds, German investments in Roumanian undertakings amounting to some \$60,000,000 were also sequestered.⁵⁸ In Italy, as in most other belligerent countries, "establishments" in which there was an enemy interest were placed under sequestration, and pro-

York *Times*, November 22, 1917. American holdings in Germany were of course small in comparison with German holdings in the United States, the proportion being estimated at about 100 to 1 in favor of the United States. The value of American owned property in Germany was estimated at about \$14,000,000.

^{56a} Text in N. Y. *Times*, October 18, 1918.

⁵⁷ Richard King, *Solicitors' Journal and Weekly Reporter*, December 19, 1914, p. 143.

⁵⁸ London *Weekly Times*, September 8, 1916.

vision was made for their liquidation in certain cases. The bar of Milan complained that the Italian Government did not go further and place under sequestration all German property, including credits, securities, etc., if it did not even demand confiscation.⁵⁹

Seizure of the Venetian Palace at Rome. One act of the Italian Government, however, which evoked protest from the Vatican and from the Government of Austria-Hungary, was the decree of August 29, 1916, "retaking" possession of the Venetian palace at Rome, an imposing pile constructed in the fifteenth century for the Borgia family, belonging to the Austro-Hungarian Government and occupied by its embassy to the Vatican. The reason alleged for the seizure of the palace was the numerous Austrian atrocities against the law of nations and the destruction by Austro-Hungarian aviators of Italian historic monuments and edifices.⁶⁰ The Pope addressed a protest to all governments represented at the Holy See against the action of the Italian Government as an encroachment upon the rights of the Pontiff to whom the Austrian Papal Ambassador was accredited.⁶¹ To this the Italian Government replied that the retaking possession of the palace did not affect the rights and prerogatives of the Holy See, and that it was no violation of the Italian Law of Papal Guarantees, but merely a war measure against enemy property remaining in Italian territory. Moreover, the Pope, never having accepted the Law of Guarantees, had no right to invoke its provisions in his favor. Finally, he was reproached for having refrained from

⁵⁹ The text of the protest of the bar may be found in an article by Professor Valéry, entitled *La Condition des Biens des Sujets Ennemis et le Barreau de Milan*, in *Clunet*, 1917, pp. 893 ff. German and Austrian property holdings in Italy were enormous, and included many villas of princes, vast landed estates, and numerous financial houses, industrial enterprises, etc.

⁶⁰ When Venice became a part of the Italian Kingdom in 1866, the Italian Government allowed the Austro-Hungarian Government to retain possession of the palace. According to the Italian view, the seizure of the palace in 1916 was simply the resuming possession of the property which the Austro-Hungarian Government had been allowed to occupy merely by sufferance. The Spanish Embassy, which had taken charge of Austro-Hungarian interests in Italy after the breaking off of diplomatic relations between the two countries and which now occupied the palace, was notified at the time the above-mentioned decree was issued to remove the archives by October 31st.

⁶¹ The Austrian Papal representative had left Rome at the time.

protesting against Austrian and German atrocities, which included the destruction of many religious edifices and historic monuments, but was content to raise his voice against violations of international law only when his own rights were affected.⁶²

F. PATENTS, TRADE-MARKS AND COPYRIGHTS

British Policy. The policy of dealing with that peculiar species of property consisting of patents, trade-marks, designs and copyrights occupied the attention of most of the belligerent governments, though it was less difficult than the problem of dealing with other forms of enemy property, and on the whole the practice has been much more in accord with the principles of humanity and justice, to say nothing of the more liberal and enlightened principles of international law. In several of the belligerent countries the number and value of patents held by enemy subjects was very great. This was notably true of England and the United States, where patents to many valuable inventions were held by German subjects resident in Germany. Under the English common law it is unlawful for a patentee or licensee or the proprietor of a registered trade-mark or design, who is a person of enemy nationality or domicile, to carry on any trade or business in British territory in respect to such property during the continuance of the war. He cannot, therefore, manufacture or sell in British territory any articles for which he holds a patent or a design or apply any of the processes in respect to which he has a monopoly. But, obviously, if the exploitation of enemy patents were totally interdicted in a country where the manufacture of many of the most important articles is controlled by enemy patentees, the country might find itself deprived of the use of many articles which are required for the national defense and the maintenance of its economic life.

The British Parliament enacted shortly after the outbreak of the war a law empowering the Board of Trade, in its discretion and on the application of any person, to avoid or suspend wholly or in part, subject to such conditions as it might determine, any patent or license granted to a subject of an enemy state, or the registration of any

⁶² See an article by E. L. in *Clunet*, 1917, pp. 139 ff.

trade mark or design to which an enemy subject or any person carrying on business in an enemy state might be entitled. But before issuing such an order, the Board of Trade was required to satisfy itself that it was in the general interest of the country or section of the community, or of a trade, that such article should not be manufactured or such process carried on or such trade mark registered. The Board was authorized to grant licenses to any British subject for the exploitation of patents held by enemy persons, subject to such conditions as it might see fit. As to trade-marks, however, it could only avoid or suspend registration but not grant licenses.⁶³ A large number of applications for orders avoiding or suspending enemy patents were granted by the Board of Trade,⁶⁴ and licenses were issued to British subjects to manufacture the articles the patents for which were thus suspended, whenever in the opinion of the Board considerations of public policy made it desirable.⁶⁵ British licensees in such cases were required to pay the royalties due the enemy patentee to the public trustee, the same to be held by him until the end of the war, when they would be disposed of as the government might determine. Licensees were required to keep accounts, allow the inspection of the same, and in some cases to allow the inspection of the business premises. The policy of the British Government was, therefore, not to confiscate the rights of enemy subjects in patents or registered designs granted under its authority, but merely to suspend them, and to confer upon British subjects for the time being the right to exploit them whenever the interests of the national defense or the economic life of the country required, the ultimate rights

⁶³ Pulling, *Manual of Emergency Legislation*, pp. 226-236; Baty and Morgan, *op. cit.*, pp. 546-550.

⁶⁴ See an article by John Cutter, K. C., in the *Solicitors' Journal and Weekly Reporter* for November 14, 1914, p. 54. See also the issue of the same journal for November 7, 1914, p. 39.

⁶⁵ *British Patent Journal*, February 21 and May 9, 1917. With a view to safeguarding British capital invested in the manufacture of articles controlled by German patents, it is said that the British Government gave assurances to licensees that they would be allowed to continue to exploit such patents after the close of the war and until their expiration. See an interview by Mr. A. E. Parker, a New York patent attorney, in the *New York Times*, April 14, 1917, and an interview by Mr. Lawrence Langner, *ibid.*, April 13, 1917.

of the owners being preserved. With a view to preserving the proprietary rights of British subjects in patents issued to them by enemy governments, the Board of Trade on September 23, 1914, granted a general license for the payment in enemy countries of any fees necessary for obtaining the grant or renewal of patents or for obtaining the registration of designs or trade-marks or the renewal of the same in enemy countries. By way of reciprocity, the German Chancellor, on October 13th, issued a proclamation allowing payments to be made in England for a similar purpose by persons domiciled in Germany, and subsequently this privilege was extended to allow payments to be made in France, Russia and Roumania.⁶⁶

French Policy. The policy of the French Government was similar in principle to that of Great Britain. The matter was not dealt with by legislation, however, until some ten months after the outbreak of the war. By an Act of Parliament of May 27, 1915, the exploitation of patents and the use of trade-marks owned by German and Austro-Hungarian subjects, or held in their behalf, was forbidden in the interest of the national defense. There was no intention, however, of revoking or confiscating them. The Act provided that where the manufacture and sale of the patented article was necessary to the national defense or was in the public interest, the government might exploit directly the patent or grant the privilege of exploitation to a French, allied or neutral *concessionnaire*.⁶⁷ Assignments of patents, the granting of licenses, and transfers of trade-marks, properly made before the outbreak of the war to enemy subjects, were to be respected and given full effect, but the beneficiaries were forbidden to make any payments to enemy subjects. No grant for a patent for which application had been made since August 4, 1914, in the case

⁶⁶ But by a proclamation of December 28, 1916, the permission thus granted to pay fees of this kind in enemy countries was restricted so as to apply only to subjects of Germany or her allies and to neutral persons. A British subject, therefore, domiciled in Germany could not avail himself of this privilege. See Huberich in the *Solicitors' Journal and Weekly Reporter*, Vol. 61, p. 180.

⁶⁷ Text of the law in Reulos, *Manuel des Séquestres*, pp. 23 ff., and Clunet, 1915, pp. 258 ff. See, also, Théry, "Emergency Legislation of France," *London Solicitors' Journal*, October 23, 1915, pp. 4-5. The texts of the laws and ordinances of France, Germany, England and Austria-Hungary relating to the treatment of enemy patents may be found in Clunet, 1915, pp. 960-978.

of German subjects, or since August 13th in the case of Austro-Hungarian subjects, could be made unless otherwise ordered. As in other countries, French owners of German patents were allowed to transmit to Germany the necessary sums for the payment of fees for renewal and the like.

German Policy. By an ordinance of September 10, 1914, the Patent Office, upon application, was empowered to grant to the owner of a patent, who by reason of the war was placed in a position of not being able to pay the annual fees, an extension not exceeding nine months, beginning with the date when payable and without penalties. Furthermore, where it could be shown that by reason of the state of war a person had been prevented from complying in due time with any regulation prescribed by the Patent Office, a *restitutio in integrum* might be ordered, provided application was made within two months from the date when the act should have been done. These provisions operated in favor of subjects of a foreign state only if similar concessions were granted to subjects of the German Empire by the foreign state, and if such reciprocity had been recognized by notification in the German Official Gazette.⁶⁸ As has been said, the German Government by way of reciprocity allowed Germans holding patents in England to make the necessary payments there for the purpose of preserving or renewing their patents.

In October, 1914, the *Reichsgericht* was called upon to decide the question as to the rights of a citizen of France who had applied for a patent in Germany under Article 4 of the Paris Convention of 1883 for the international protection of industrial property. This convention had been duly approved and ratified by the *Bundesrath* and *Reichstag*, and was held to be a part of the law of the German Empire. The court ruled that until a law had been passed limiting the rights of enemy aliens under the convention, they must be regarded as entitled to the same protection as those of German subjects. War, said the Imperial Court, is a contest between states as such and not between peoples; hence, enemy subjects must be assimilated to the condition of nationals in respect to their private rights.

⁶⁸ Huberich, *op. cit.*

Therefore, they were entitled to the same protection as that which they enjoyed before the outbreak of the war, subject only to such exceptions as might have been made expressly by law. The provisions of the above-mentioned convention could not, therefore, be regarded as having been terminated or suspended by the outbreak of the war between the contracting parties.⁶⁹ Even if the convention had been so terminated or suspended, said the Imperial Court, it would have had no effect upon vested rights of enemy aliens. The applicant had filed his application before the outbreak of the war and had thereby acquired a vested right under Article 4 of the convention. In conclusion, the court declared that international conventions dealing exclusively with civil matters are not affected by war, and unless legislation to the contrary based on reprisal has been enacted, judges must give effect to such conventions.⁷⁰

The British Comptroller of Patents made a similar ruling in respect to the status of copyrights held in England by German authors.

By an ordinance of July 1, 1915,⁷¹ however, the *Bundesrath* conferred on the Chancellor power to limit or suppress in the public interest the rights of enemy subjects and of persons residing in enemy territory, in respect to patents and trade-marks. But, as in other countries, the exploitation of enemy patents under specified conditions, when it was required by the public interest, could be conferred on German licensees, and in fact such licenses were granted in a good many cases, the royalties due to the owners being paid into the Imperial Treasury.⁷²

Apparently the only substantial difference between the legislation of Germany and that of the other countries was the authority which seems to have been conferred on the Chancellor by the ordinance mentioned to abolish the rights of enemy patentees. It has

⁶⁹ The Supreme Court of Japan, however, seems to have held that the outbreak of war between Germany and Japan suspended the convention as between those two Powers. Text of the decision in *Clunet*, 1916, p. 653.

⁷⁰ The text of this decision, so highly creditable to the *Reichsgericht*, may be found in Soergel, *Kriegsrechtssprechung und Kriegsrechtslehre*, p. 75; French translation in *Clunet*, 1916, pp. 1314 ff.

⁷¹ French text in *Clunet*, 1915, pp. 962 ff. and 1916, pp. 105-106.

⁷² Some instances are mentioned in *Clunet's Journal*, p. 107, 1916.

THE NEUTRALITY OF SWITZERLAND

III

NEUTRALITY AND CONSTITUTIONAL DEVELOPMENT

THE recognition and guarantee of Swiss neutrality once definitely accomplished at the Congress of Paris in November, 1815, its subsequent progress was destined to be deeply affected by constitutional struggles in both federal and cantonal organizations.

It will be recollected that the initial change in the ancient Swiss alliance to a more modern form of government was introduced as the result of invasion by the French revolutionary forces, and that from April 12, 1798, to February 19, 1803, Switzerland was governed under the Helvetic Constitution imposed by the French, which created a military state with the cantons as administrative divisions only in accordance with Title II, section 15 of the instrument:—

L'Helvétie est divisée en cantons, en districts, en communes et en sections ou quartiers des grandes communes. Ces divisions sont des divisions électorales, judiciaires et administratives, mais elles ne forment point de frontières.

This constitutional arrangement yielded to the Mediation Constitution of Napoleon, which continued to be the country's basis of government from February 19, 1803, until it was formally repudiated December 29, 1813, at Zurich, as a consequence of the entry of Basel of the Allies eight days previously.

Although both of these constitutions were dictated by French Power, they nevertheless introduced great and lasting reforms. They laid a tangible foundation to which the country's subsequent development owes much. Perhaps the most important of these reforms was the abolition of subject territory in the constitutional plan, the recognition of equal and independent cantonal states within Swiss borders.

Napoleon's Mediation Constitution in fact completely reorganized the country. It is entitled *Acte Fédéral de l'An 1803* and

German authors were entitled to no protection under it against publication of their writings in England. The Trading with the Enemy Amendment Act of 1916 had created a copyright in such publications and had vested it in the public trustee. The ultimate disposition of the right and the royalties due thereunder was to be determined after the conclusion of hostilities. The granting of the license to publish the translation of Prince von Bülow's book was, therefore, recommended by the Comptroller, and it was accordingly issued by the public trustee. This action, however, was criticized by many persons in England as being in contravention of the Berne Convention.⁸³

On the whole, however, there was a commendable disposition on the part of all the belligerent governments to respect the rights of enemy authors and publishers.⁸⁴ In some cases the interests of their own citizens required it, and the advantages of a contrary policy would have been more than offset by the loss.

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⁸³ The president of the British Association of Publishers stated that numerous German works copyrighted in England were offered to British publishers for translation and publication. Those who offered them had in most cases not obtained permission from the German authors or publishers. The Association expressed the view that such an appropriation of enemy property rights was contrary to the Berne Convention and would throw discredit upon the British nation, who was then struggling for the maintenance of international obligations. The Association therefore expressed that every British publisher would refuse to publish a work copyrighted in England by a foreign author unless his consent had been obtained. *Clunet*, 1916, p. 550.

⁸⁴ Compare Howell in the *Yale Law Journal*, Vol. 17, p. 348.

been stated, however, that the power thus conferred was exercised only in a limited number of cases.⁷³

Legislation in the United States. The status of patents, trademarks and copyrights held in the United States by enemy subjects was defined by the Trading with the Enemy Act of October 6, 1917.⁷⁴ This Act allowed enemy subjects to file applications in the United States for patents, trade-marks and copyrights,⁷⁵ and to pay the necessary fees, and in case of inability to make the payments or perform other necessary acts on account of the war, they were to be allowed an extension of time up to nine months, provided their governments accorded reciprocity of treatment. With the consent of the President, payments of fees might be made in the enemy country by American citizens for the renewal or preservation of their patents, trade-marks and copyrights in such country. As in the other belligerent countries, provision was made for granting licenses to American citizens for manufacturing or producing, during the duration of the war, articles patents for which were held by enemy subjects, and for using trade-marks, copyrights, etc. The authority to grant licenses was delegated to the President to be exercised by him when in his judgment the public welfare required.⁷⁶

Clunet, 1917, p. 106. As to Austrian legislation, see Clunet, 1915, pp.

In August, 1916, the Austrian Government, "by way of retaliation" against England and France, decreed that patents and trade-marks held by the subjects of these countries might be restricted or abolished by the Minister of Public Works, in the public interest. London *Solicitors' Journal*, August 26, 1916, p. 713. According to the press dispatches the Russian Government went so far as to "appropriate" all patents owned by Germans and relating to "inventions," and declared all others to be "invalid."

The provisions of the Act applied equally to subjects of governments in which the United States was an enemy of the United States.

On April 16, 1918, however, the President issued an order directing that patents and copyrights should in the future be issued to enemy subjects, and that American citizens be given American citizenship to apply for patents in enemy countries. It was stated in October, 1917, that 200 applications for patents by enemy subjects were on file in the Patent Office, but that action on the same was deferred until information was received as to what policy Germany

The President in turn delegated to the Federal Trade Commission the power to act upon him. See the Executive Order of October 12, 1917, in *Supplement to the JOURNAL*, January, 1918, p. 51.

A very liberal provision was that which authorized enemy owners, at the close of the war, to institute proceedings in equity against licensees for the recovery of compensation for the use and enjoyment of their patents, trade-marks or copyrights, and which authorized the courts to adjudge and decree a reasonable royalty, the amount to be paid out of the fund deposited by the licensee. They were likewise empowered to prosecute suits against other persons than licensees to enjoin infringements of their rights. The law did not specifically declare for the avoidance and suspension during the war of the rights of enemy subjects in respect to patents, trade-marks or copyrights, but its provisions were clearly based on the assumption that they were suspended. There was no thought, however, of annulling them or impairing their validity.

On the whole, the policy of the United States was more liberal than that of any of the governments mentioned. In view of the large number of valuable patents held in Germany by citizens of the United States, it was to the interest of the United States to deal liberally with the holders of German patents here in order to secure reciprocity of treatment by Germany. Favorable treatment of American patentees by the German Government was assured by reason of an even larger number of valuable patents held in the United States by German subjects.

The Status of Copyrights. Various questions in regard to rights held by persons of enemy nationality were raised by the war. Are belligerent governments bound to protect literary works, musical compositions of enemy authors who hold copyrights in their own countries by such governments? Are international copyright conventions terminated by the outbreak of war between the contracting parties, or are they merely suspended, or do they remain unaffected? What was the effect of the war on the International Copyright Convention created by the Berne Convention? The various belligerent governments fall into two classes, so far as international copyrights are concerned: first, those which are members of the International Copyright Convention, is, those which are parties to the Berne International Copyright Convention of 1886; and second, those which are not.

of the European countries belong to the first class; Russia, the Balkan states, Austria-Hungary and the United States fall within the second group.⁷⁷ The rights of the citizens or subjects of these latter countries are regulated, so far as they are regulated at all, by individual treaties.⁷⁸ The Berne Convention contains a stipulation to the effect that the convention shall not be abrogated by the outbreak of war between the parties, but that the parties may annul or suspend it so far as they are concerned.⁷⁹

In fact, although some of the belligerent governments treated the convention as having been suspended, it does not appear that any of the parties went to the length of treating the convention as abrogated, and, according to the principle laid down by the German Imperial Court, quoted above, in respect to the validity of the Paris Convention of 1883 Relating to the International Protection of Industrial Property, the validity of the Berne Convention was not affected by the war. In most of the countries, enemy copyright holders were accorded the same treatment accorded to enemy patentees, and what was said above in regard to the treatment of the latter applies equally to the former.

In the United States, for example, enemy subjects were allowed to file and prosecute applications for copyrights and pay the fees therefor, and American citizens were authorized to pay to enemy governments the necessary fees to obtain copyrights in such countries provided a license for this purpose was obtained from the

Droit d'Auteur, June 15, 1917, p. 68. The United States, though not a member of the International Copyright Union established under the Berne Convention, is in the anomalous position of enjoying the privileges of the union in consequence of its having entered into reciprocal copyright conventions with practically all the countries which are members. See Howell, "International Copyrights of the United States," *Yale Law Journal*, Vol. 17, pp. 348 ff.

For an article on the general subject in the *Solicitors' Journal and Weekly*, October 24, 1914, pp. 4 ff. In 1898, the Attorney General of the United States gave an opinion that Spanish subjects were not entitled to the copyright conferred on Spanish subjects by proclamation prior to the outbreak of the war between Spain and the United States. That is, these rights were suspended by the war. H. Docs., 56th Cong., 2nd session, 1900-01, Vol. 99.

The text of the Berne Convention may be found in Clunet's *Journal du Droit International*, 1887, pp. 780 ff.; the revised convention of 1908 may be found in *ibid.*, pp. 685 ff.; see also *ibid.*, 1917, p. 791.

President.⁸⁰ But by an order of the President, issued on April 16, 1918, these privileges were revoked and thereafter no enemy subject could obtain a copyright in the United States, and no citizen of the United States could file an application with an enemy government for a copyright.

The Trading with the Enemy Act⁸¹ also provided that any enemy subject should be allowed to prosecute suits in equity to prevent infringements of copyrights in the United States in the same manner and to the same extent that he would be entitled to do if the United States were not at war. This liberal concession to enemy copyright holders was not accorded, however, by some of the belligerent governments. The German courts, for example, were not open to any enemy person domiciled *outside* the Empire. Nevertheless, under the decision of the Imperial Court referred to above, that the Paris Convention of 1883 was not affected by the outbreak of the war, the Berne Convention, to which Germany was a party, was equally unaffected, and consequently enemy copyright holders in Germany were fully protected.⁸²

The view, however, that the Berne Convention was unaffected by the outbreak of the war does not appear to have been accepted by all the belligerent governments. The question was raised in England by an application from an English publishing house for a license to publish an English translation of Prince von Bülow's *Denkschriften zur Politik*. The Comptroller-General of Patents ruled that all treaties, such as the Berne Convention, between Great Britain and Germany were suspended by the outbreak of the war. That being

⁸⁰ Trading with the Enemy Act, sec. 10, pars. *a* and *b*. In August 1918 it was announced that the Alien Enemy Property Custodian would hand over the royalties due on copyrighted enemy operas in the United States.

⁸¹ Sec. 10, par. *g*.

⁸² But certain French publishers complained to the Bureau of International Union that German publishers in fact were guilty of publishing for sale in Switzerland pirated editions of works upon which French or authors held copyrights in Germany, this in contravention of the Berne Convention. The Bureau in reply to these protests promised steps would be taken to prevent the circulation and sale of such pirated editions in Switzerland. See the correspondence relating to the matter, in pp. 551-555.

the twentieth chapter of a lengthy document, each of whose nineteen chapters contains the constitution of a canton, these cantons being the original thirteen together with six new ones, namely, St. Gallen, Graubünd, Aargau, Thurgau, Ticino, and Valais.

The Mediation Constitution also effected a distinct centralization of power as contrasted with the loose and impracticable tie which formally characterized the alliance of thirteen, but this abandoned, a total lack of co-operation was at once perceived by the Allies, who accordingly determined to assume and perhaps increase the earlier system of Napoleonic pressure, though animated by far higher ideals. The Swiss, consequently, found that now, far from being emancipated, they were rather to experience a more direct control on the part of new masters. Thus it was on New Year Day, 1814, the Russian envoy proposed to the Diet at Zurich that it proceed without delay to the formation of a federal constitution, for since not all of the cantons were actually represented, the timid delegates had hesitated on the plea that only united action could be valid; hence nothing was likely to be accomplished. But even under the spur of the envoys, little progress was made, and Count Capo d'Istria, therefore, on April 21st presented an elaborate memorial, demanding that the cantons at once attend to the securing of harmony within their borders, and that in place of reactionary attempts to establish the ancient system of dependent districts, and to surround local cantonal sovereignty with safeguards which would paralyze federal action, they should draft a constitution aiming at unity and assuring defence against danger from without by developing regulated harmony within and strength in the conduct of foreign affairs, a strength to be found only in constitutional federal government. "In our time," said he, "a territory without unity and a constitutional system, if surrounded by powerful kingdoms, does not deserve the name of a state. While it may exist, it owes this at best to the good will or prudence of its neighbors. In this melancholy case Switzerland now finds itself, and it should at once notify Europe, through the formation of a confederation with adequate powers, that it possesses a government whose armed forces will cause its neutrality to be respected; such an aim demands a military organization sustained by federal funds. Thus

alone may Switzerland say, 'I am neutral and shall so remain,' and the Diet should be clothed with powers sufficient to these ends. There should, too, be a federal council of five members chosen by the Diet, with executive authority to control in some measure the cantonal constitutions not yet formed in order that a federal guarantee of cantonal organization may be called into being." Still little was accomplished, and another and sharper note was addressed to the Diet on August 13, 1814, by Russia, Austria, and Great Britain, as follows:—

De tous les points du pacte fédéral qui encore aujourd'hui divisent la Diète, il n'en est pas un qui n'eût été décidé il y a longtemps par la grande majorité des voix, si de tous les côtés l'on s'en était occupé avec un égal dévouement. Au lieu de conserver à ces questions leur pureté et leur simplicité, une malheureuse complication avec les prétentions territoriales formées par quelques Cantons, est venue distraire les esprits et confondre les objets. Aucun Canton, quel qu'il soit, ne saurait par lui-même fixer l'attention des grands Etats de l'Europe; ce n'est et ce ne peut être que sous la figure d'un corps fédératif que la Suisse entière les intéresse. C'est pour affranchir ce corps du joug qui l'opprimait; c'est pour lui rendre son libre arbitre et la parole que les puissances alliées portèrent leurs armes sur les frontières de la Suisse, combattirent, stipulèrent pour elle. Et le premier, le seul usage qu'elle ferait de son indépendance reconquise et à elle restituée par ces magnanimes souverains, n'aboutirait qu'à faire scission et à réduire ainsi tout le corps fédéral à l'inaction, à la nullité la plus absolue? Non, la Suisse ne peut pas être déchue à ce point. La Diète, à laquelle est confiée la direction de ses premiers pas vers l'Europe assemblée, ne voudra pas que les Ministres ici soussignés n'aient à offrir à leurs très augustes Maîtres, pour tout résultat, qu'un tel retour. Ils ne doutent plus que, faisant trêve à toute question qui n'est pas essentiellement commune à tous, les membres jusqu'ici les plus dissidents retourneront au sentiment de leur devoir envers leurs Co-Etats et d'une juste gratitude envers généreux libérateurs, rachétant par un redoublement de zèle et de loyauté dans l'achèvement du pacte fédéral tout le temps perdu.

C'est à cette condition que les soussignés prennent ici l'engagement, non seulement de faire tout ce qui dépend d'eux pour trouver et faire agréer des modes de compensation équitables et suffisant aux demandes du second et troisième ordre, mais encore de solliciter sur celles du Canton de Berne, qui sont au premier rang, des pouvoirs et instructions telles qu'il en faudra pour rétablir la concorde en Suisse et concilier les intérêts de tous les Cantons. Si cette propo-

sition ne conduit pas à un résultat satisfaisant, les soussignés se trouveraient hors d'état de continuer leurs relations avec la Diète, en attendant les ordres ultérieurs de Leurs Majestés.

These admonitions resulted in a formal agreement, adopted September 8, 1814, on the part of fourteen cantons and two half-cantons, which furnished a foundation for action at Vienna in the following spring by the committee on Swiss affairs and produced a definite alliance-constitution (*Bundes-Vertrag*), which became effective August 7, 1815, although Lower Unterwalden (*Nidwald*) did not ratify it until August 30th. Under this constitution the country subsisted until the adoption of a new and thoroughly modern instrument in 1848; and this instrument, revised and amended, forms the present constitution of Switzerland.

During the long period, then, which intervened between the entry of the Allies in December, 1813, and the ratification of the Alliance in August, 1815, the country was nominally guided by the delegates originally commissioned to the now abrogated Mediation Diet, though in reality administrative power lay in the hands of the Allies, and for all practical purposes government was under the direction of the Russian and Austrian envoys. On May 20, 1815, two months subsequent to the celebrated declaration touching Swiss affairs adopted by the Vienna Congress, there was concluded a military convention between Switzerland and the Allies, definitely committing Switzerland to their cause against Napoleon, a course accompanied by no little anxiety until the final decision at Waterloo a month later.

Switzerland's constitution of 1815, while possessing the merit of at least giving the country a practicable form of general government, was nevertheless reactionary in its essential features. The former six directorial cantons, together with the federal chairman (*Landammann*), were now replaced by three chief meeting towns (*Vororte*), Zurich, Berne, and Lucerne, the federal government moving every second year to one of these three points. The sole federal officials were a chancellor and secretary; the available military forces consisted of cantonal contingents only, nor were these based on any system of compulsory individual military service, but were to be furnished by the cantons in a proportion of two per cent to the population of each.

The federal Diet consisted of instructed delegates from the cantons; it was to exercise the privilege of sending diplomatic envoys to Vienna, Paris, and Berlin, and its deliberations were to be carried on under the chairmanship of the chief magistrate in office at the place of meeting. It was to possess the powers of war and peace and the making of treaties, but the control nevertheless of military, economic, and police affairs was retained by the cantons. There was neither a federal postal service nor a distinctly federal monetary system nor one touching weights and measures, these latter matters being intended to be subjects of inter-cantonal agreement. One vicious result of the new alliance was soon seen in the conclusion by individual cantons, or groups of cantons, of various military conventions (capitulations) with the leading states of Europe for the supply of necessary troops, a practice plainly inconsistent with true neutrality and destined to be abolished in 1848. The agreement with Napoleon some years previously to furnish contingents when required had reduced Switzerland to practical vassalage, and its declared neutrality became in practice little more than the avowal of a purpose not to engage directly in warfare on its own account. The overt retention of a possibility of such action under the new Confederation stamped that alliance as prepared to sustain, when occasion might serve, the cause of any Power, pledged to principles subversive of that constitutional freedom soon to be demanded by the coming era.

At the very outset, indeed, of its troubled existence, the Confederation was confronted with the prospect of a virtual protectorate, the earliest suggestion of which appeared in a request made in July, 1816, that the Diet adhere to the Holy Alliance, formed September 26, 1815; it was not without many misgivings that the delegates on January 27, 1817, replied in a note which, while welcoming an assertion of the lofty conceptions avowed in the Alliance's foundation, studiously avoided a definite diplomatic adherence to the union. Russia, Austria, and Prussia, nevertheless, professed to see in the Swiss note a virtual acceptance and a pledge of countenance should need arise, for the Alliance's projects, such countenance not conflicting, in the Russian view at least, with Swiss neutrality:

“L'Empereur a senti,” said Alexander, May 17, 1817, “se fortifier encore l'estime que lui a toujours inspiré le caractère de la Nation Suisse et l'intérêt invariable qu'il porte à sa paisible indépendance et à son énergique neutralité.”

Nor were the Powers in any wise dilatory in an assertion of their views, which were plainly disclosed at the Congress of Aix-la-Chapelle in a Prussian memorial presented by Ancillon, who proposed that in periodical congresses the Alliance should develop a central regulative system touching European affairs—a general protectorate in short—and that states whose existence might depend upon guarantees on the part of the Powers should not be allowed to change their constitutions on penalty of armed intervention.

At Troppau in 1820, at Laibach in 1821, and at Verona in 1822, these sinister conceptions were expanded, and the reactionary policy of Metternich was not slow in seizing upon the age-long Swiss practice of granting asylum to refugees from every species of oppression, as a pretext for active interference. On November 13, 1820, accordingly, a joint Prussian and Austrian note was sent from Troppau to the Diet at Lucerne sharply protesting against the toleration of German and Italian refugees in Switzerland.

These protecting Powers claimed: que plusieurs individus, gravement compliqués dans les différentes procédures intentées aux démagogues allemands ont su se soustraire aux enquêtes et ont porté hors de l'Allemagne leur esprit révolutionnaire. Plusieurs de ces individus avaient cherché à établir à Strasbourg le foyer de leurs intrigues; ils ont fait depuis autres calculs et ont passé en Suisse. J'apprends qu'il est formé à Coire un club composé en partie de ces réfugiés et en partie d'autres mauvaises têtes de différents pays.

So halting, however, was the Diet's attitude that it was not until July 14, 1823, that a *conclusum* was adopted calling upon the cantons, whose position in many instances had been that of a practical defiance of the Powers to beware of too liberal hospitality toward foreigners, as well as too outspoken utterances on the part of the press; in any case, criminals should not be harbored nor should Swiss soil be a vantage-ground for international plottings.

Thus encouraged, Prussia promptly asked the extradition of

sundry alleged conspirators; its demand was not granted, and Switzerland remained, as it has since been, a shelter for many whose offences do not fall within the proper limits of criminal law. The Prussian and Austrian effort, nevertheless, had specially in view the creation of a supposed duty on the Diet's part to maintain a political police surveillance as an element of its neutrality, whose benevolent guaranty by the Powers obliged the Swiss Government to refuse asylum where interests of its benefactors might be threatened upon its soil. Such a doctrine ignored the continued existence of sovereignty in a neutralized state and assumed that Switzerland could be brought to book for a neglect having no foundation save in an Austro-Prussian assumption, which wilfully sought to trample upon plain treaty provisions and familiar international principles.

For in no event can neutrality, either temporary or permanent, be justly held to diminish the quality of sovereignty, though it may indicate limitations upon all warlike action, save in strict self-defense where resistance is ever justifiable on the neutral's part to the uttermost.

Touching the highly sovereign right to admit or entertain whomsoever a state may please, neutrality, as such, does not in any degree abrogate or qualify sovereignty, although it may and does impose duties as well as beget rights during actual warfare between other governments. But in the matter of internal police, the attitude of the Prussian and Austrian courts could claim no support except in their own arrogance. They studiously, also, overlooked the important truth that they had unqualifiedly declared Swiss independence and neutrality to be in the interest of all Europe. Beyond controversy they had directly guaranteed the new Swiss treaty frontiers, and by necessary implication the country's independence and permanent neutrality. Independence, too, was on more than one occasion most explicitly announced to be freed from external interference. The guaranty of Switzerland's new borders by the Powers constituted, in effect, an international warranty of title, warranty (*warandia*) and guaranty (*guarandia*) being similar in derivation and import (cf. Gothic, *wasjau*; German, *Gewere*; Engl., *seisin*, investiture).

For the sake of greater clearness and of repetition, we shall ven-

ture to collect here some clauses from leading treaties, beginning with the convention signed at Lunéville, February 9, 1801, between France and the Germanic Empire, which resulted, nevertheless, in a Napoleonic protectorate so far as Switzerland was concerned:

Article XI. Le présent traité de paix . . . est déclaré commun aux Républiques Batave, Helvétique, Cisalpine et Ligurienne. Les parties contractantes se garantissent mutuellement l'indépendance desdites Républiques, et la faculté aux peuples qui les habitent d'adopter telle forme de Gouvernement qu'ils jugeront convenable.

So in the identical offensive and defensive treaties of alliance between Austria, Great Britain, Prussia, and Russia, concluded at Chaumont, March 1, 1814, Article I of the annexed separate articles declared for a Swiss confederation independent and under European guaranty:

La Fédération suisse dans ses anciennes limites et dans une indépendance placée sous la garantie des grandes Puissances de l'Europe la France comprisé.

The first Congress of Paris, May 30, 1814, developed this announcement, as has been seen already, though with a suggestive qualification of allied supervision in the actual framing of the federal constitution:

Article VI. La Suisse, indépendante, continuera de se gouverner par elle-même.—Articles séparés et secrets. Article II. La France reconnaîtra et garantira, conjointement avec les Puissances Alliées et comme elles, l'organisation politique que la Suisse se donnera sous les auspices desdites Puissances et d'après les basses arrêtées avec elles.

To this latter clause, foreshadowing a share on the part of the Allies in the framing of a new federal constitution, the instrument of August 7, 1815, was, as has been noticed, fully responsive, since it has been drawn up and finally ratified under allied pressure. Yet no sufficient grounds could be alleged for a continuing supervision once Switzerland had become politically united under a form of alliance acceptable to the guaranteeing Powers. Nor was it intended that upon a point so vital to the interests of the country any just doubts whatever should remain. This clearly appears in the care-

fully drawn fourth clause of the declaration of November 20, 1815, annexed to the identical treaties of the Second Peace of Paris:

Les Puissances signataires de la Déclaration du Mars reconnaissant authentiquement par le présent acte que la neutralité et l'inviolabilité de la Suisse, et son indépendance de toute influence étrangère sont dans les vrais intérêts de l'Europe entière.

Swiss neutrality was not to be held as a gift, nor yet in any sense a temporary self-sufficing aloofness from the contests or misfortunes of others; but, on the contrary, an age-long policy, originally adopted by groups of pastoral mountaineers and now under a strengthened union and with territorial borders, extended and protected by international guarantees, recognized as an element of importance to the peace of Europe. The static quality in neutralization thus illustrated or objectified a new departure in diplomatic practice and of which Switzerland was to exhibit virtually the earliest example, although in the celebrated Recess of 1803 the dying Germanic empire had provided (in Section XXV):

Les Villes de Ratisbonne et de Wetzlar jouiront d'une neutralité absolue, en cas de guerre même d'Empire, attendu qu'elles sont l'une le siège de la Diète Générale, l'autre le siège de la Chambre Impériale.

But inasmuch as both Diet and Supreme Court disappeared three years later, this regulation proved of small practical information.

A more interesting attempt, however, to secure the benefits of neutralization was seen in the nearly contemporary case of Moresnet, a small though valuable mining district lying a short distance south-westerly from Aix-la-Chapelle.

The first Treaty of Paris, May 30, 1814, declared in Article V for the free navigation of the Rhine to the sea "du point où il devient navigable jusqu'à la mer," thus practically making Rotterdam a German port, a feature of grave importance during the present war. The following Article (VI) placed Holland under the sovereignty of the House of Orange-Nassau, and a year later a treaty between Nassau and Prussia, signed May 31, 1815, by Biberstein and Hardenberg, gave Prussia sundry territories belonging to Nassau and comprising the celebrated fortress of Ehrenbreitstein.

In order to more satisfactorily mark the boundaries between Prussia and the new Kingdom of Holland, whose sovereign had, by Articles LXV-LXXIII of the Vienna Final Act, became Grand Duke of Luxemburg and possessor of part of the ancient duchy of Bouillon, a carefully drawn boundary treaty was made by six commissioners representing Holland and Prussia at Aix-la-Chapelle, June 26, 1816. Some difficulty having arisen touching the precise demarcation of frontier lines in the commune of Altenberg or Moresnet, lying a few miles southwest of Aix-la-Chapelle and on the road to Liège in Belgium, a portion of this district was assigned to Holland, another to Prussia, while a joint administration was to preserve the remaining part as common territory *not liable to military occupation*:

Sera soumise à une administration commune et ne pourra être occupée militairement par aucune des deux Puissances.

While that portion of Holland adjoining Altenberg came subsequently within the limits of Belgium, Altenberg itself, generally known as neutral Moresnet, continued to preserve the status of joint occupation and practical neutrality created by the treaty of June 26, 1816, until, in the opening days of August, 1914, it was occupied by the German army in the advance on Belgium.

From the foregoing, it is clear that the Austro-Prussian claim to a guardianship over Swiss internal affairs was as little to be justified as the invasion and devastation of neutralized territories in 1914. From afar off, indeed, the Diet sensed an element of peril in the paragraph above cited from the First Peace of Paris providing that the Powers should recognize and guarantee the new Swiss political organization. The federal and cantonal delegates were consequently instructed to obtain a guarantee of Swiss military organization and of the new frontiers. At Paris the committee of the Powers was inclined to favor these requests, but in the end nothing was done touching an assurance of military strength, nor did the Holy Alliance in later years favor efforts of the Diet to promote military organization, save the vicious system of cantonal mercenary contingents expressly encouraged in order that these might be employed in repressive measures. To check self-development on any lines of

federal strength, indeed, seemed undeniably the Austro-Prussian program.

But a spirit of democratic reconstruction was in the air, heralding the downfall of reaction, however firmly entrenched. Rising amid the Swiss cantonal governments under the impelling force of the movements of 1830 in France and elsewhere, this spirit soon reached the Diet in the tangible shape of a memorial presented on the part of canton Thurgau, supported by Zurich, August 19, 1831, proposing the appointment by a committee to revise the constitution. A year later, July 17, 1832, a preliminary outline was laid before the Diet, drawn up by the celebrated and gifted Pellegrino Rossi, who, as a political exile from his native country, had settled in Geneva, where he taught Roman law at the Academy, later the University. The remaining thirteen members of the committee comprised men of political and scholarly eminence fully representative of the Swiss nation. The new constitutional plan (*projet*) frankly acknowledged an indebtedness to Napoleon's Mediation Constitution which, in its theory at least, admirably struck a balance between the canton states and the federal body sought to be instituted. After all, said Rossi, the cardinal point for determination is the location of sovereignty—is it cantonal or federal?—

C'est là une question de fait, Messieurs. L'examen des faits nous a conduit à penser que l'idée dominante en Suisse est celle de la souveraineté cantonale. Grâce au progrès des lumières, au besoin fortement senti d'énergie et de dignité nationale, à une connaissance plus approfondie des circonstances générales où la Suisse se trouve placée, les exigences de cette souveraineté sont moins âpres, les susceptibilités moins acerbées, et si elle n'a pas cessé d'être ombrageuse, elle consent peu à peu à regarder les objets de près, elle se roidit moins et cède plus facilement à la voix de la commune partie.

No lesser recognition of the ancient spirit of cantonal independence could have hoped for success at that time, although the present-day Swiss organization is, in its essence, but a development of Rossi's outline finally realized in the constitution of 1848, now revised and amended in the construction of a highly-centralized federal state, rather than a federal aggregation of cantons, in which local sovereignty must ever be a weakening and reactionary influence.

The new constitution in its eleventh article, as completed by the statute of 1859, abolished foreign mercenary service of cantonal contingents, unified, in Article 19, the structure of the Swiss army, and, in Article 74, concentrated the employ of all means looking to the maintenance of independence and neutrality in the hands of the Federal Assembly, whose executive arm is the Federal Council chosen by it every three years. There is thus instituted a self-sustaining government directly responsible to the Swiss people and exercising, if need arise, every energy within Swiss borders.

The constitution, also, expressly raises neutrality to the high level of a fundamental and integral principle of governmental action, elimination in 1857 of the Prussian King's dangerous claim to Switzerland's western borders as Prince of Neuchâtel and Count of Valangin, the shadows of autocratic interference with Swiss democratic progress and development vanished utterly away.

Two years later, however, in 1859, and again in 1870, the new Swiss Government was obliged to face the inevitable problems arising from war between its neighbors. Here, nevertheless, it showed itself equal to every emergency and possessed of resources enabling it to successfully meet all threatened danger to neutral obligations or privileges.

Thus it was that when in the opening spring days of 1859 northern Italy prepared to break loose from intolerable Austrian oppression, the Federal Council addressed, on March 14th, a note to the several signatory Powers of the Vienna and Paris treaties, declaring a determination on the part of the Swiss Government to maintain the territorial integrity and neutrality as theretofore recognized and guaranteed:—"the right," said the Council, "to remain neutral belongs to us in any event, since no state is obliged, apart from express treaty, to engage in the conflicts of others. A recognition by the Powers did not therefore confer neutrality, but rather compels the signatories of 1815 to defend any violation should such occur." The treaties, also, added the Council, grant Switzerland the right, though not imposing the duty, to occupy neutralized Sardinian (Savoyard) territory should need arise to safeguard Swiss interests by such action; in any event the Council would not move without

consulting Sardinia and the Powers. From all these latter suitable replies were received, save from Austria, which Court, with a cynical contempt for its clear treaty obligations so solemnly incurred in 1815, vaguely announced that it would respect Swiss neutrality in so far as respected by others:—

Qu'il respectera religieusement la neutralité Suisse tant que la Confédération elle-même l'observera et la fera observer par tous les moyens en son pouvoir.

Here the burden of compelling respect is laid on the Swiss, whereas the Vienna-Paris treaties imposed this on the signatory Powers.

Thus summoned to defensive measures, the Swiss Government prepared to repel any wilful violation of its frontiers, although, so brief was the contest along the plain of the Pô between the Italo-French forces and the Austrians, that this task proved to be of an essentially formal nature merely. A brief notice of the chief incidents will not be devoid of interest; the geographical features involved are also important.

In the spring of 1859, when France prepared to assist Sardinia against Austria, the plains of Lombardy were accessible from France by three practically desirable ways: the sea route via Genoa and the Alpine passes of Mont Genève and Mont Cenis. The sea was selected by Napoleon for the transport of three army corps commanded by him in person, Bourbaki's command being sent over Mont Genève, while the remaining troops, led by Trochu after Bonat's sudden death, went by Mont Cenis. The railroad facilities existing at that time were meagre enough, communication by this means stopping far short of the main Alpine chain.

From the standpoint of military permissibility, regard being had to the claims of Swiss neutralization, the way by rail to Grenoble and thence by road past the great fortress of Briançon over Mont Genève via Oulx to Susa at the head of the Pô valley, offered no violation of neutrality, the entire route lying far to the south of either Switzerland or neutralized Savoy. With the Mont Cenis route, however, the case was otherwise. This latter highway, then as now an example of Napoleon's road construction at its very best, started from Lyon on

the Rhone and ran thence by the ancient Savoyard frontier town of Pont de Beauvoisin through the wonderful rock galleries at les Échelles to Chambéry; here it met a rail line leading eastwardly from Culoz junction, a station on the Lyon-Geneva railway, and from which junction passengers and troops coming by rail from Lyon could be carried to Chambéry, and thence as far as St. Jean de Maurienne in the Valley of the Arc, the railroad being built along the stream parallel to the great Mont Cenis roadway, which continues northeasterly up the deep-lying Arc valley past Modane (where the present Mont Cenis tunnel under the Col de Fréjus begins) to Lanslebourg, and thence turning abruptly south across the main chain of the Alps on the northerly slopes of Mont Cenis and joins the Mont Genève highway at Susa.

In transporting his division by rail from Lyon to St. Jean de Maurienne, whence it was to reach Italy by the road over the Mont Cenis pass, Trochu was probably aware that for a few miles eastwardly from Culoz junction and along a part of the north shore of the Lac de Bourget, the rail line lay just within the southerly frontier of neutralized Savoy, although inasmuch as this neutrality frontier, stretching from Mont Blanc to the Rhone, has never been accurately surveyed, it was not, nor is it now, possible to determine whether the French here committed a technical violation of Savoyard-Swiss neutrality. In any event, the troops were traversing not merely allied territory, but territory already promised by Sardinia to France in the secret treaty signed at Plombières in July, 1858. Even Austria was content with a general announcement at the time, and a note in the following year to the Swiss Government stating the probable fact of violation, an announcement, however, which went no further; while in the following November, 1859, the Swiss Federal Council proposed to thereafter consider the few miles of rail affected as lying outside neutral borders. It is, moreover, not to be overlooked that France might easily have elected to raise far more serious questions by marching troops across the wild stretches of northerly Savoy to the pass of the Little St. Bernard, or even across Swiss territory proper to the Simplon by the great highway leading from below Geneva along the Savoyard side of the lake.

The problems confronting the Swiss Government eleven years later in the Franco-Prussian War were, however, of a far more onerous nature. Keenly alive from the outset of that struggle to the responsibilities imposed upon it, the Federal Assembly on July 18, 1870, issued a general declaration of neutrality and at once took all needful measures to place the country in a condition of military preparedness. In accordance with constitutional provisions, a general was elected to command the citizen-army, the choice falling on Herzog, chief artillery instructor, whose ability was to prove itself equal to every emergency. Immediate mobilization provided adequate forces along the German and French frontiers, and when in January, 1871, Bourbaki's Army of the East determined to retire from Besançon towards Pontarlier in the Jura, with Lyon as its objective, Herzog was able to place his troops in readiness for a possible move on the part of the French over the Swiss border. To this latter step Clinchant, Bourbaki's successor in command, was at least compelled, since Manteuffel had blocked the planned retreat southward, and Clinchant must now either face battle under disadvantageous circumstances or cross the Swiss border. But here an apparently serious difficulty arose, since the armistice concluded on January 28th would, in the opinion of the Federal Council, render internment out of the question. But upon learning that the northeasterly sections of France (Côte-d'Or, Jura, Doubs, Belfort) were not comprised in the armistice, Herzog was allowed to conclude, at the mountain village of Les Vervièrès, at five o'clock in the morning of February 1st, a brief agreement with Clinchant, the exhausted French forces, 90,314 in number, streaming through the town during the actual signing of the document and amid the trying environment of midwinter dawn in a climate of extraordinary severity. The disarmed troops were mustered in part easterly through the Val de Travers, through Neuchâtel to northern Switzerland, and in part to the southward through Val-lorbes, a station on the present railway line between Paris and Lausanne, to the districts about Lake Geneva. They were all repatriated at the close of March, the French Government refunding the cost of their maintenance, some twelve million francs. Switzerland suffered no invasion or violation of its neutrality, nor was this happy immu-

nity due so much to the solemn international obligations intended to safeguard the land as to the consistently determined attitude of its central government and the acknowledged completeness of its military preparation for every probable emergency. As to Savoy, although local authorities there expressed a willingness or anxiety for occupation to some extent by the Swiss military forces, the brief duration of the war effectually foreclosed the question without decisive action.

While, also, a reception and internment of fugitives from insurrectionary or belligerent forces had been permitted in the case of Garibaldi and his compatriots, who crossed the Swiss frontier of Canton Ticino in 1848, and again in a number of instances arising during the conflicts of 1859 and 1866, it was not until the critical situation of January, 1871, that the theory and practice of internment became developed in a manner which, supplemented by extension of its benefits through later expansions of the Red Cross organization, have given it a high place in the law of modern warfare.

To Switzerland, indeed, the centralization of its government has brought the protective strength once sought to be obtained in the pastoral league of the ancient Defensional—the armed neutrality of Wyl. This could not hope, however, to become more than an example or pattern by means of which later generations might profit through the development of a federative government sufficiently robust in itself to safeguard the country freed from the weaknesses of cantonal rivalry or dissension.

It is this spirit in Swiss affairs which has furnished the mainspring of independence and growth, and has made it possible throughout the course of the present war to present a frontier which no belligerent has ventured to violate save in a technical manner only.

GORDON E. SHERMAN.

(Authorities: *die Bundesverfassungen der Schweizerischen Eidgenossenschaft*, Hiltz; "*La Régénération*", by Numa Soroz, in "*La Suisse au Dix-Neuvième Siècle*"; *die Geschichte der Schweizerischen Neutralität*, by Prof. Schweizer, of Zurich; the treaty of Les Vervières is in the de Martens treaty collection.)

THE HELLENIC CRISIS FROM THE POINT OF VIEW OF CONSTITUTIONAL AND INTERNATIONAL LAW

PART V

WE now come to the last part of what one might call the Greek tragedy, which was played in Hellas during the first three years of this world war with such marvelous success under Teutonic guidance. The events of June, 1916,¹ laid bare the whole plot, unmasked the royal actors at Athens, and compelled France and England, the protecting Powers of Greece, at last to take drastic measures.

The surrender of the "key" to Eastern Macedonia (the Roupel fortress) by Constantine to the Germano-Bulgarian forces was rightly considered by the guardians of Greece as a hostile act directed against them, demanding the adoption of appropriate measures for the security of their armies on the Balkan front. Their first measure to this end was the substitution of Allied authorities for those of Greece in the city of Salonika. The second was the refusal by Great Britain to supply coal to Greek ships. The three Entente Powers had previously warned the Greek Government that if it allowed the armies of their enemies to advance freely into Greek territory, such action would lead to serious consequences.² Therefore, the Royal Government of Greece, fearing lest the Allies institute repressive measures of a more drastic character, informed the Entente Governments that the further advance of the Bulgarian troops into Greek territory would be prevented.³

On June 10, 1916, as a further precautionary measure, French military forces occupied the Island of Thassos, near the port of Cavalla, in Macedonia, because France had reasons to believe that the Bulgarians would be allowed by Constantine to occupy that port.

¹ See Part IV in this JOURNAL for July, 1918.

² *London Times*, June 9, 1916.

³ Statement of Mr. Skouloudis, the Greek Premier, to the Entente Ministers, in *London Times*, June 10, 1916.

On June 21, 1916, the Governments of France, Great Britain and Russia sent to the Greek Government the following collective note:⁴

Under instructions from their Governments, the undersigned, Ministers of France, Great Britain, and Russia, representatives of the guaranteeing Powers of Greece, have the honor to make the following declaration to the Hellenic Government, which they have also been instructed to bring to the notice of the Greek people:

As they have already declared solemnly and in writing, the three guaranteeing Powers of Greece do not ask her to depart from her neutrality. They give a striking proof of this in putting amongst the first of their requests the complete demobilization of the Greek army in order to insure tranquillity and peace to the Greek people. But they have numerous and legitimate grounds of suspicion against the Greek Government, the attitude of which towards them is not in accordance with its repeated engagements, or even with the principles of a loyal neutrality. It has too often favored the activities of certain foreigners, who have been openly working to mislead the opinion of the Greek people, to pervert its national conscience, and to create on Greek territory hostile organizations contrary to the neutrality of the country, and tending to compromise the security of the naval and military forces of the Allies.

The entry of Bulgarian troops into Greece, the occupation of Fort Rupel and of other strategical points with the connivance of the Greek Cabinet, constitute a fresh threat for the Allied troops, which imposes on the three Powers the obligation to demand guarantees and immediate action.

On the other hand, the Greek constitution has been ignored, the free exercise of universal suffrage prevented, the Chamber dissolved for the second time in less than a year against the clearly expressed wishes of the people, the electors summoned with general mobilization in force, with the result that the present Chamber only represents a small part of the electorate, the whole country subjected to a régime of police oppression and tyranny, and led towards ruin without attention being paid to the justifiable observations of the Powers. The latter have not only the right, but the imperative duty, to protest against such violations of the liberties of which they are trustees to the Greek people.

The hostile attitude of the Greek Government towards the Powers who liberated Greece from the foreign yoke and assured her independence, the evident collusion of the present Cabinet with their enemies, are yet stronger reasons for them to act with firmness, basing themselves on the rights which they hold from treaties to safeguard the Greek nation, and which have been strengthened each time the

⁴ British Parliamentary Paper, Miscellaneous No. 27 (1916).

exercise of its rights and the enjoyment of its liberties has been threatened:

Consequently, the guaranteeing Powers find themselves compelled to insist that the following measures should immediately be put into force:

1. The real and complete demobilization of the Greek army, which is to be placed on a peace footing with the least possible delay.

2. The existing Ministry to be immediately replaced by a Cabinet of Affairs of no political complexion, affording all necessary guarantees for the loyal application of the benevolent neutrality which Greece has undertaken to observe towards the Allied Powers, as well as for the sincerity of a new appeal to the country.

3. The immediate dissolution of the Chamber of Deputies, followed by a general election immediately after the expiration of the term laid down by the Constitution and after the general demobilization shall have restored the electorate to its normal conditions.

4. The removal, in accord with the Powers, of certain police officials, whose attitude, inspired by foreign influence, has facilitated assaults on peaceful citizens as well as insults offered to the Allied legations and their nationals.

Ever animated by the most benevolent and most friendly feeling towards Greece, but at the same time resolved to obtain without discussion or delay the application of these indispensable measures, the guaranteeing Powers can only leave to the Greek Government the entire responsibility for the events which may occur if their just demands are not immediately accepted.

This peremptory note compelled the Premier, Mr. Skouloudis, and his associates to tender their resignation to Constantine, who was not long in substituting another Cabinet headed by Mr. Zaimis. The new Prime Minister, who subsequently proved to be no less subservient to the royal will than his predecessor, assumed the reins of government on June 23, 1916, and on the same day in a note to the three Entente Ministers, he declared that the Greek Government was ready to acquiesce completely in the demands of the three Allies.⁵

This apparent submission did not, however, prevent the King from continuing to use every possible artifice to thwart the plans of the Entente Powers, culminating in an open clash with them and the shedding of innocent blood. Thus, while the demobilization of the regular Greek army was slowly and reluctantly proceeding, Constantine was secretly preparing another army, modelled on the Swiss

⁵ British Parliamentary Paper, Miscellaneous No. 27 (1916).

system, which could be made ready within a short time. These prospective soldiers, who were enrolled under the euphemistic name of "reservists," soon became the terror of those who opposed or were suspected of opposing the so-called royal policy. The money needed for the organization of these bands was amply furnished by the German Legation at Athens.⁶

While the German Minister at Athens was giving assurances to Mr. Zaimis that the armies of the Central Powers and their Allies would not advance beyond the occupied Greek strongholds and fortresses, in Eastern Macedonia,⁷ the Bulgarians were making preparations to push their forward movement as far as the Ægean Sea and to dispossess Greece of her territory with its rich tobacco fields and the much coveted port of Cavalla.

This movement was accomplished undoubtedly with the connivance of Constantine, who had given secret orders to the Greek commanders not to oppose the Bulgarian invasion. As a matter of fact, the Greek army not only did not attempt to stop the invasion, except a small section which did so contrary to its instructions, but it refused to help the French contingents which attempted to stop the invaders.⁸ When the Bulgarian army approached the outskirts of Cavalla, the officer in charge of the defense of that locality took the necessary measures to defend the city, but, to his surprise, General Hatsopoulos, acting under superior orders, gave instructions to the Greek troops to surrender the surrounding ground and prohibited them from digging any trenches for their defense.⁹

The invasion of Macedonia by the Bulgarian troops and the disastrous consequences which resulted from it for Greece, made a deep impression on the Greek people of that country; but the most humiliating and disgraceful incident of the Macedonian tragedy was the

⁶ This was admitted by Mr. Tsanetouleas, the Minister of Finance in the Cabinet of Prof. Lambros, during the Parliamentary inquiry instituted in Greece in the course of the year 1917. See minutes in *Greek National Herald*, November 29, 1917.

⁷ Greek White Book, Document No. 67, Supplement to this JOURNAL for April, 1918, p. 159; also *Documents Diplomatiques*, Supplément, 1917, No. 33.

⁸ S. B. Pronotario, *The Macedonian Tragedy* (in Greek), pp. 26, 27, 28.

⁹ *Ibid.*, p. 49.

surrender of nearly 8,000 Greek troops under General Hatsopoulos with nearly all the war material accumulated by Greece in Eastern Macedonia. Most of these troops had reached the sea coast and were preparing to embark on English boats for transportation to the Greek mainland, under instructions of the Greek Minister of War (General Yanakitsas), when they were suddenly ordered by their commander, General Hatsopoulos, to move to the interior of the country, behind the Bulgarian troops. Thus, while the War Minister was ordering the troops to return to Greece, King Constantine was giving secret orders to their commander to surrender them to the Germano-Bulgarian Army.¹⁰ The only action that the Greek Government took was to make a perfunctory protest to Germany and demand the return of the troops, which was, of course, not complied with. This action of Germany in making prisoners of war of troops of a neutral country was entirely unprecedented, but was undoubtedly done at the suggestion or with the acquiescence of Constantine, who feared that these soldiers, if left free, would join the Salonika movement.

On August 30, 1916, a revolution, headed by some Greek officers and a few civilians, broke out in Salonika. The revolutionists immediately repudiated the Government of Constantine and formed a Committee of National Defense, whose purpose was to eject the Bulgarian invaders from Greek Macedonia. This revolutionary junta later developed into the Provisional Government of Greece, under the leadership of Mr. Venizelos, Admiral Countouriotis and General Danglis, with headquarters at Salonika. The Provisional Government, under the eyes of the three protecting Powers of Greece, soon began to increase in power and influence, to the detriment of the Royal Greek Government attached to the Central Powers.

As the King still continued to temporize and evade in the fulfillment of the promises made to the Entente, on September 1, 1916, 23 Allied warships, with 7 transports of troops, appeared a few miles off the port of Piræus. The next day the ministers of Great Britain

¹⁰ The German Minister at Athens, in a note to the Greek Minister under date of August 28, 1916, stated that the Greek troops surrendered voluntarily the forts and Cavalla, as well as the war material. Greek White Book, Doc. No. 88 in SUPPLEMENT, April, 1918, p. 160.

and France, in a note to the Greek Government, informed it that they had learned that information about their military movements was being sent to their enemies by Greek officials over the Greek telegraph lines. They therefore demanded: 1st, the control of the posts and telegraph lines, including the wireless system; 2nd, the immediate expulsion from Greece of enemy agents employed in corruption and espionage; 3rd, that the Greek Government take the necessary measures against Greek subjects guilty of complicity in corruption and espionage.¹¹ Upon receipt of this note the Greek Government immediately acquiesced in the demands.¹²

On September 10th, some ruffians, instigated by the German propaganda, entered the garden of the French Legation, while the Entente ministers were holding a conference, and shouted "Long live the King, down with France and England."¹³ French sailors were landed to protect the legation, and on September 11th the Zaimis Cabinet resigned, its position having become unbearable on account of the popular clamor due to the Bulgarian invasion of Macedonia.¹⁴

On the 16th of the same month, Constantine induced Mr. Calogeropoulos, a politician of the old school, to form a Cabinet, ostensibly to conciliate the Allies, but really in order to placate them, while he continued to carry out the royal policy. The pro-German sympathies of some of the members of this new Cabinet were known to the Entente ministers and they refused to have any dealing with it.

On September 25th, Mr. Venizelos left the Hellenic capital and proceeded to his native land, Crete, where he raised the standard of rebellion, which he characterized as being not "anti-dynastic," but "anti-Bulgarian," namely, for the expulsion of Tsar Ferdinand's army from Greek Macedonia. On October 16th, the Provisional Government was created in Salonika, consisting, as previously stated, besides the Cretan Statesman, of Admiral Countouriotis and General

¹¹ London *Times*, September 4, 1916, and other London papers of that date. Also Crawford Price, *Venizelos and the War*, pp. 185-186.

¹² London *Times*, September 5, 1916.

¹³ *Ibid.*, September 11, 1916.

¹⁴ *Ibid.*, September 13, 1916.

Danglis. This triumvirate exercised the power of a regular and orderly *de facto* government, and in a short time extended its authority to nearly all the islands and to that part of Macedonia which was under the control of the army of the Entente Powers.

The Provisional Government at Salonika had both the moral and material support of Great Britain, France and Russia. The Royal Government, on the contrary, was unable to get efficient help from the Teutonic Powers, except money for purposes of corruption and the maintenance of a secret army. Therefore, Constantine, in order to prevent the further extension of the authority of the Provisional Government to the rest of Greece, and to propitiate public opinion in the Entente countries, offered to the Allies most of the remaining war material of Greece, to counterbalance, as he stated, a similar favor which he was accused of having shown to the Central Powers and to Bulgaria. This offer was made to the French Deputy, Mr. Benazet, during a visit to Athens in the autumn of 1916, but was subsequently repudiated by Constantine on the pretext that it was not ratified by his so-called government, as we shall presently see.¹⁵

While the King was secretly playing his game of double dealing, Admiral Dartige was presenting notes on the part of the three Entente Powers, making various demands on the Greek Government, such as the expulsion of enemy agents, the control of the police by the Allies, the surrender of the Greek fleet and the expulsion of the ministers of the Central Powers and their Allies from Athens, to which the Government of Constantine reluctantly acquiesced.¹⁶

But what was most strange was that while the French Admiral was presenting peremptory notes to the Greek Government and employing coercive measures against Greece, the people, at least the majority of them, did not seem to resent the attitude of the Allies towards them. Thus, on October 28th, Admiral Dartige was received with ovations by the Mayor, the Municipal Council and the people at Piræus, and on November 16th, the same popular demon-

¹⁵ Official report of Mr. Benazet, communicated to the Greek Government by the French Foreign Office on April, 1918, in *London Times*, April 22, 1918.

¹⁶ See notes presented during the months of October and November, 1916, in *London Times* of October 7, 12, 13, and November 23, 1916.

stration was shown during his visit to the Mayor and Municipal Council of Athens.¹⁷

Pursuant to the above-mentioned preliminary understanding between Constantine and the French Deputy Benazet, Admiral Dartige, on November 16th, presented a note to the Greek Government in which it was stated that the surrender of the Roupel Fortress and the port of Cavalla to the Bulgarians, and particularly the abandonment to the invaders of the important war material, had disturbed the equilibrium to the profit of the enemies of the Entente; that the French Government desired to re-establish this equilibrium, and to that end demanded from the Greek Government the surrender of all the remainder of the war material which the demobilization of the army had rendered useless. Compensation was offered for the value of the war material to be surrendered.

On November 21, 1916, Professor Lambros, the then Greek Premier, answered that so far as the rupture of the equilibrium was concerned, the war material and guns belonging to Greece which had been seized by the Allies were not only superior to those taken by the Bulgarians, but more modern; that if the Greek Government acquiesced in the demands contained in the note, it would commit a flagrant violation of neutrality; that, furthermore, the stripping of the country of its arms, thus making the nation impotent to defend its vital interests if they should be jeopardized, would not be tolerated by Greek public opinion. For these reasons, the Greek Government refused categorically to comply with the demand of the Entente Powers.

The French Admiral on November 24, 1916, rejoined with an ultimatum the substance of which was that the Greek Government should deliver ten mountain batteries by the 1st of December (1916) and the remainder not later than the 16th of the same month, and that in case of non-compliance with this demand, the commander of the Allied fleets would take all the measures required by the situation.¹⁸

On November 30, 1916, the Greek Government refused to surren-

¹⁷ London *Times*, October 30, and November 20, 1916.

¹⁸ *Ibid.*, November 27, 1916.

der arms.¹⁹ That night about 2,500 Allied blue jackets were landed at Piræus, the majority of them coming from the French men-of-war. The next day the Allied contingents marched towards Athens, and were suddenly attacked by Greek troops stationed on the hills near the road. The Allied sailors returned the fire, and about 200 persons on both sides were killed and wounded.

The attack against the Allied contingents had evidently a double object: first, to cause a split between the Allies and the Greek people so as to preclude their subsequent cooperation against the Teutonic Powers in the event of the assumption of power by Mr. Venizelos and his party; and secondly, to extirpate the Venizelist movement by the massacre of the adherents of the Cretan "Rebel," and by this act of frightfulness to terrorize the people and compel them to cling to Constantine, who, it was hoped, would be looked upon as the defender of the independence of Greece.

In further compliance with this prearranged plan, during the same day (December 1) and the next day, hundreds of peaceful citizens of Athens were arrested, a number were murdered in cold blood, and many, after being brutally treated by the royal police and "Reservists," were put in jail. Similar acts of terrorism were perpetrated in other parts of Greece against the adherents of Venizelos or those who disapproved "the royal policy."²⁰

These acts of lawlessness committed by the agents of Constantine and the German propagandists provoked the indignation not only of the representatives of the Allies, but also those of the Neutral Powers. The American minister, seconded by the minister of Holland, made representations to the Greek Government severely condemning the acts perpetrated on December 1st and 2nd against innocent persons by agents of the Greek Government.²¹ The American minister furthermore demanded that the Greek Government grant redress for the grievance of a naturalized citizen of the United

¹⁹ London *Times*, December 2, 1916.

²⁰ See details of these events in London *Times*, December 9, 1916, and other London papers of that date. Also in *Le Temps*, December 19, 1916, *Journal des Débats*, January 8, 1917, and *Revue des Deux Mondes*, March 1, 1917, in article by L. Maccas.

²¹ London *Times*, December 9, 1916.

States who was robbed and ill-treated by the soldiers of Constantine, without any justifiable cause, and would probably have been shot had it not been for the timely intervention of the minister.²²

In the eyes of Constantine the perpetrators of these dastardly acts were heroes worthy of reward and high distinction. The Minister of War (General Yanakitsas) issued on behalf of his royal master to the troops at Athens who took part in the events of December 1st and 2nd an order of the day congratulating and thanking them for their "exemplary behavior during the memorable days of December 1st and 2nd."

It should be noted that the notorious "Reservists" were still flourishing, notwithstanding the promise of Constantine and the official note of his government to the Allies that they would be dissolved. They were proclaimed the pillars of the throne and in two circulars addressed to them by their Central Council were secretly complimented for their nefarious acts at the time of the December massacre.²³

The royal press was profuse in its eulogy of the "Great King." The court organ, *Nea Hemera*, referred to the first and second days of December as "two of the greatest, the most sacred, splendid and glorious days in all the recorded days of Greek history."²⁴

While the King, through his tools, was thus extolling the treacherous attack on the Allied contingents, the Greek Government, on the other hand, on December 1st, through its representative at Paris "was expressing its sincere regret and that of King Constantine for the recent events in Athens, which they deplored."²⁵

Great Britain and France, humiliated by the treacherous acts of Constantine of December 1st and 2nd, and baffled by his intrigues, at last found themselves forced to take drastic measures against a country which was, so to speak, their own creation and which had

²² See details in London *Daily Telegraph*, January 6, 1917, and in New York *Times*, of same date.

²³ *Le Temps*, December 26, 1916, and *Journal des Débats*, January 10, 1917.

²⁴ London *Times*, December 26, 1916.

²⁵ Reuter's dispatch of December 13, 1916, quoted by London *Times* and other English papers of that date.

enjoyed their protection for nearly a century. On December 7, 1916, their fleets instituted a blockade of the coasts of the Hellenic Kingdom, except the territories under the control of the Provisional Government of Salonika.

On the 14th of December, 1916, the ministers of France, Great Britain, Russia and Italy addressed an ultimatum to the Greek Government peremptorily demanding the transportation of the Greek troops stationed in Thessaly and the war material to Peloponnesus, and the stopping of the movement of Greek troops and war material to the north. The ultimatum stated that the non-acceptance of these demands within twenty-four hours would be considered a hostile act, and furthermore that "the blockade of the Greek coast would be maintained until the Greek Government had made full reparation for the recent unprovoked attacks of the Greek forces against the Allied troops in Athens and until sufficient guarantees have been given."²⁶

In reply the Greek Government promised to comply with the demands of the Allied Powers, and expressed the hope that they would raise the blockade of the coasts of Greece.²⁷

The ministers of France, Great Britain and Russia, who had now taken their residence in men-of-war lying near the harbor of Piræus, perceiving that Constantine was undermining their work in various ways, particularly through the so-called Reservists and generally through German spies, demanded in a new note, dated December 21, 1916, the prohibition of the meetings of the Reservists, the control again of the telegraph and post-office services,—of which they had been dispossessed during the events of December 1st and 2nd,—the release from jail of all the adherents of Venizelos, and the creation of a mixed commission to inquire into the events of December 1st and 2nd.²⁸

But Constantine still tried to evade the demands of the Allies by dilatory methods and particularly to avoid releasing the Venizelists

²⁶ English text of ultimatum in *London Times*, December 16, 1916.

²⁷ *Ibid.*, December 18, 1916. See also supplementary note in *ibid.*, December 26, 1916, and other London papers.

²⁸ *Ibid.*, December 22, 1916.

and the payment to them of compensation for the damages inflicted upon their properties during the December troubles. Another note, dated December 31, 1916, was therefore transmitted to the Greek Government, signed by the three Protecting Powers of Greece,—Italy associating herself by a separate note,—in which the Allies demanded: (1) The withdrawal to the Peloponnesus of all Greek troops, except those necessary for police and the maintenance of order, with all their arms and munitions of war, the period of execution to be settled in common with the delegates of the Allies; (2) the prohibition of all meetings by the Reservists, except in the Peloponnesus, and the "rigorous enforcement of the measures prohibiting all civilians from carrying arms"; (3) the restoration of the various Allied controls which were in existence before the 1st of December, 1916; (4) the release of all persons detained for political reasons, and indemnification to persons who unjustly suffered as a result of the events of December 1st and 2nd and the following days; (5) the removal of the general of the army who was in command during the December troubles; (6) and last, a formal apology to the ministers of the Allies by the Greek Government. The note concluded by informing the Royal Government that "military necessity may compel them shortly to land troops at Itéa (on the coast of the Gulf of Corinth) and take them to Salonika by the Larissa railway."²⁹ After warning the Greek Government that the three Protecting Powers reserved to themselves full liberty of action in case the attitude of that government subsequently gave them cause for complaint, they formally pledged themselves to the Hellenic Government "not to permit armed forces of the Government of National Defense to profit by the retirement of the royal troops from Thessaly and Epirus to cross the neutral zone established in agreement with the Greek Government."³⁰ The Allies did not, however, omit again to inform the Greek Government that the blockade of the coasts of

²⁹ London *Daily Telegraph*, January 2, 1917.

³⁰ This pledge to Constantine was the source of much trouble. It practically insured immunity to Constantine without any benefit to the Allies, for that crafty sovereign while deriving all the advantages accruing to himself, evaded the obligations imposed upon him. It was therefore bitterly criticized by Mr. Venizelos.

Greece would be maintained until satisfaction had been accorded on all the points contained in the note.³¹

On January 6, 1917, Constantine's Minister for Foreign Affairs transmitted to the Allies the answer of the Greek Government to their note of December 31, 1916, but as this answer was considered evasive and unsatisfactory, the three Protecting Powers and Italy, on January 9, 1917, presented an ultimatum.³²

The following day the Greek Government acquiesced in the demands of the Allies with some reservations and requested that the blockade of the coasts of Greece be raised, to which the Allies replied on January 13, 1917, refusing to raise the blockade until after the unequivocal acceptance and carrying out of all their demands.³³

On January 16, 1917, the Greek Government accepted the ultimatum in its entirety and promised to carry out the demands of the Allies. On January 24, 1917, it apologized for "the regrettable occurrences" of December 1, 1916, when the international contingents were attacked by the royal troops at Athens, stated that General Callaris, the commander of the sail troops, had been deprived of his command, and promised to dissolve all societies prejudicial to the state. On January 29, 1917, the ceremony of the salute to the flags of the four Allied Powers took place at Athens in the presence of the Allied ministers.³⁴

Notwithstanding all these diplomatic notes and the promise of the Greek Royal Government faithfully to comply with the Allied demands, all kinds of subterfuges were used in order to delay, hamper, and, if possible, evade, the fulfillment of the promises given. The *mot d'ordre* given secretly to the military commanders, as well as to the civil authorities, was that the "son of the Eagle," as Constantine was called by his admirers, resented the pressure of the Powers, and that he was only seeking to gain time, and that therefore every artifice should be used to deceive the Allies. In consequence of these machinations, many officers and soldiers who had

³¹ London *Daily Telegraph*, January 2, 1917.

³² *Ibid.*, January 12, 1917.

³³ *Ibid.*, January 18, 1917.

³⁴ *Ibid.*, January 31, 1917.

been transported to the Peloponnesus were secretly returned in civilian clothes or on leave to the northern part of Greece. Arms, munitions and a large part of the war material were hidden in different parts of the country instead of being transported to the Peloponnesus as promised to the Allies. Irregular bands were formed under the command of royalist officers, who infested the so-called neutral zone and on more than one occasion attacked the Allied soldiers and officers.³⁵ General Sarrail was obliged to take drastic measures against these royal marauders and ordered the Allied troops to pursue them relentlessly. German officers crossed into Greece for purposes of espionage and propaganda and it was well known to the Allied Legations that they were frequent visitors at the Royal Palace and held secret conferences with the adherents of the King.³⁶

In the beginning of May, 1917, the cabinet of Lambros resigned and Mr. A. Zaimis again agreed to head a Ministry. This easy-going person had the reputation of being pro-Ally, but lacked volition. By this time the Entente statesmen were tired of half-measures and decided to carry out the resolution which they had already formed, namely, the dethronement of Constantine. Accordingly in June, 1917, a distinguished French statesman, namely, Charles C. A. Jonnart, Member of the Senate and former Minister for Foreign Affairs, was appointed by the three Protecting Powers of Greece, namely, France, Great Britain and Russia, as High Commissioner to Greece, entrusted with the delicate task of giving a final solution to the Hellenic crisis.

Mr. Jonnart was to carry out the decision of the three Powers without bloodshed, if possible. While he was on the way to Greece, the army under General Sarrail in Macedonia was marching to occupy Thessaly. A French detachment occupied both sides of the Canal of Corinth and seized the bridge connecting the two mainlands, thus blocking all communications between the mainland of Greece

³⁵ The guilt of Constantine on this point is established beyond doubt in the deciphered telegrams. *Documents Diplomatiques*, Supplément, Nos. 61, 67 and 69.

³⁶ London *Times*, May 1, 1917. See *Documents Diplomatiques*, Supplément, No. 79, in which ex-Queen Sophie speaks of her conversation by telephone with Falkenhausem who had then gone to Larissa by aeroplane.

and the Peloponnesus, where the majority of the Greek troops had already been transported at the request of the Allies. Italy, on her side, more for political than military reasons, occupied the much coveted city of Yannina, the capital of Epirus, in the hope of incorporating it with the so-called Albanian State, over which the Italian Government had declared a protectorate. On June 11th, contingents of Allied troops landed also at Piræus, but the bulk of the troops were kept in the ships ready to land and march to Athens in case of need.

Mr. Jonnart, after reaching Piræus, had an interview on board a man-of-war with Mr. Zaimis, to whom he communicated the object of his mission, and on June 11th he delivered an ultimatum to the Greek Government on behalf of the three Allies informing it that the Protecting Powers had decided to reconstitute the unity of the kingdom without impairing the institution of constitutional royalty which they had guaranteed; that as King Constantine had violated the Constitution which had been guaranteed by them, he "had lost the confidence of the Protecting Powers," and that, therefore, they demanded his abdication and the designation of his successor, to the exclusion of the heir to the throne. The ultimatum was to expire 24 hours after its delivery.³⁷

On June 12th, the Greek Premier informed Mr. Jonnart that King Constantine being "solicitous solely for the interests of Greece, had decided to leave the country with the heir to the throne," and that he designated as his successor his son Alexander.³⁸ Constantine by a proclamation on the same day announced to the Greek people that, submitting to necessity and fulfilling a duty, he was departing from Greece with the heir to the throne, leaving his son Alexander on the throne.

Within fifteen days of the arrival of the High Commissioner of the Allies in Greece, Mr. Venizelos, at the invitation of the new King, again assumed the reins of government.

The forcible intervention of the three Protecting Powers in the

³⁷ See details in *M. Jonnart en Grèce et abdication de Constantin*, by Raymond Recouly.

³⁸ *Ibid.*, p. 116-117; *London Times*, June 14, 1917.

internal affairs of Greece and the repressive measures which they adopted against that country have been commented upon by the public men and writers of both the Entente and Teutonic Powers. The spokesmen of the Allies assert that the intervention was justified both by treaty rights and the unneutral conduct of the Greek Government. Those of the Central Powers contend that the occupation of the territory of Greece by the Entente troops gave them an equal right to invade Hellas as a measure of self-protection and defense.

The contention of the diplomatists and statesmen of the Entente Powers is in fact supported by the diplomatic instruments which created the Hellenic State and guaranteed to it both her independence and a constitutional form of government, which Constantine wantonly violated.³⁹

On the question, however, of the landing of the Allied troops in Salonika, Great Britain and France would have been more justified had they based their actions on the Protocol of February, 1830, rather than upon the so-called invitation of Mr. Venizelos, the Premier of Greece. Their right of intervention, by which the dethronement of Constantine was effected, is founded on the express terms of the treaty of 1863 (Article 3) which guaranteed to Greece a constitutional regime. The late King George I, and father of Constantine, was placed by the three Protecting Powers upon the throne of Greece under that express condition, and in justice to the memory of that sovereign it should be stated that during his long reign of half a century, he never deviated from the oath he took at the time of his accession to the Greek throne and discharged faithfully his royal duties in obedience both to the letter and spirit of the Constitution.⁴⁰

The repressive measures resorted to by the Entente Powers, such as the blockade of the Greek coast, the seizure of her fleet and merchant marine, and other acts of this character, may be considered as

³⁹ See Part II in this JOURNAL, April, 1917, and documents in Supplement of this JOURNAL, of April, 1918, pp. 67 et seq.

⁴⁰ One may, however, mention an exception to this general conduct of the late King of the Hellenes, namely, the conferring by royal decree, of the title of the Duke of Sparta upon the successor to the Greek throne, a proceeding contrary to the express terms of the Greek Constitution by which the conferring of any title is prohibited.

acts of reprisals, justified by the unneutral conduct of the government of Constantine. The various documents published in the Greek White Book, and particularly the deciphered despatches exchanged between the ex-King or his government with the German Kaiser and the Imperial Government, furnish abundant proofs that the Royal Government of Greece under the leadership of Constantine was not only aiding secretly the Central Powers, but was only waiting for an opportunity to attack the Allied armies in Macedonia, which opportunity fortunately both for the Entente Powers and the Greek people never presented itself.

Having exposed the treacherous acts of the ex-King of Greece and his various governments, which brought their country to the brink of ruin, it may not be out of place to state that the political mistakes which were made, and the blunders which were committed, by some of the statesmen of the Entente Powers were to a great extent the source of the evils suffered by the people of Greece during the three years of the Hellenic crisis. The secret treaties with the Government of the late Czar of Russia as to the disposition of Constantinople and that with Italy, assigning to her the Greek islands of Dodecanese and Epirus under the guise of a protectorate over the so-called state of Albania, furnished to Constantine and to his sympathizers the best argument to mislead Greek public opinion, which, coupled with the ubiquitous German propaganda, brought Hellas to a pass which, had it not been for the genius of its great statesman, Mr. Eleutherios Venizelos, would have resulted in a real calamity for Greece and brought a catastrophe to the armies of the Entente Powers in the Near East.

Let us hope that these mistakes will not be repeated and that the principles of justice and equity will be the guiding spirit of the international arrangements of the future Great Peace Conference.

THEODORE P. ION.

EDITORIAL COMMENT

THE CASE OF THE LUSITANIA

IN the United States District Court, Southern District of New York, Judge Mayer on August 23, 1918, rendered an opinion in favor of the Cunard Steamship Company, Ltd., as owner of the Steamship *Lusitania*, for limitation of the company's liability for loss of life and property in the sinking of the ship.

This decision reviews the events leading up to the sinking of the *Lusitania*, and cites some of the documents exchanged between the governments in regard to the method of the conduct of hostilities. The German memorandum of February 4, 1915, said: "On and after the 19th of February, 1915, every enemy merchantship found in the said war zone will be destroyed without its being always possible to avert the danger threatening the crews and passengers on that account." The war zone mentioned referred to the waters surrounding Great Britain and Ireland and included the English Channel. This German proclamation was accompanied by a memorandum which set forth more in detail the purposes of the German Government. It was in reply to this proclamation that Secretary Bryan sent the note commonly called "the strict accountability note" of February 10, 1915.

Sir Edward Grey, in a memorandum of February 19, 1915, which is cited in the opinion, said:

It is understood that the German Government had announced their intention of sinking British merchant vessels at sight by torpedoes without giving any opportunity of making any provision for saving the lives of non-combatant crews and passengers. It was in consequence of this threat that the *Lusitania* raised the United States flag on her inward voyage and on her subsequent outward voyage.

Judge Mayer says:

It will be noted that nothing is stated in the German memorandum, *supra*, as to sinking enemy merchant vessels without warning, but, on the contrary, the implication is that settled international law as to visit and search and an opportunity for the lives of passengers to be safeguarded, will be obeyed "although

it may not always be possible to avert the dangers which may menace person and merchandise."

On May 1, 1915, the sailing date of the *Lusitania*, the following advertisement, dated April 22nd, appeared in the New York daily papers:

Travellers intending to embark on the Atlantic voyage are reminded that a state of war exists between Germany and her allies and Great Britain and her allies; that the zone of war includes the waters adjacent to the British Isles; that, in accordance with formal notice given by the Imperial German Government, vessels flying the flag of Great Britain or of any of her allies are liable to destruction in these waters, and that travellers sailing in the war zone on ships of Great Britain or her allies do so at their own risk.

IMPERIAL GERMAN EMBASSY,

April 22, 1915.

Washington, D. C.

Further, Judge Mayer says:

No trans-Atlantic passenger liner, and certainly none carrying American citizens, had been torpedoed up to that time. The submarines, therefore, could lay their plans with facility to destroy the vessel somewhere on the way from Fastnet to Liverpool, knowing full well the easy prey which would be afforded by an unarmed, unconvoyed well-known merchantman, which from every standpoint of international law had the right to expect a warning before its peaceful passengers were sent to their death. That the attack was deliberate and long contemplated and intended ruthlessly to destroy human life, as well as property, can no longer be open to doubt. And when a foe employs such tactics it is idle and purely speculative to say that the Captain of a merchant ship in doing or not doing something, or in taking one course and not another, was a contributing cause of disaster, or had the Captain not done what he did or had he done something else, then that the ship and her passengers would have evaded their assassins.

I find, therefore, as a fact, that the Captain and hence the petitioner, were not negligent.

This case also recognizes, as in the case of the *Paquete Habana*, the binding force of international law in the courts of the United States.

Secretary Lansing had said in his note of June 9, 1915, speaking of the *Lusitania*: "Only her actual resistance to capture or refusal to stop when ordered to do so for the purpose of visit and search could have afforded the commander of the submarine any justification for so much as putting the lives of those on board the ship in jeopardy." This principle was admitted in the German note of May 4, 1916.

The decision of Judge Mayer, while acquitting the Cunard Company for liability for loss of life and property in consequence of the sinking of the *Lusitania*, also implies that reparation can and should later be demanded from the German Government.

G. G. W.

LEGAL STATUS OF THE BREST-LITOVSK AND BUCHAREST TREATIES IN THE
LIGHT OF RECENT DISCLOSURES AND OF INTERNATIONAL LAW.

Recent disclosures as to the manner in which the Brest-Litovsk and Bucharest Treaties were negotiated, the notorious character of some of the negotiators, and the corrupt nature of the means employed by the German Government in influencing the negotiations, have thrown a flood of light upon these transactions. They have suggested that an examination of the legal status of these treaties in the light of such disclosures and of international law would not be without interest at this time.

The authorities are, in general, agreed that in order that a treaty may be regarded as legally valid, the following conditions must be observed:

1. There must be capacity to contract. The "High Contracting Parties" must be capable of contracting, *i.e.*, they must be in possession of the necessary rights and powers. Thus, a fully sovereign state has full capacity to enter into contracts with other fully sovereign states, and a part or semi-sovereign state has such measure of contracting power as has been retained by or conferred upon it.

2. The negotiators of the treaty must have full powers from their government. They must not act in excess of their powers, or their government is not bound.

3. The treaty must, in a general way, be in conformity with, or at least not in direct violation, of the rules, principles and customs of international law. Thus, a treaty would clearly not be binding which had as one of its objects the subjugation or partition of a country, asserted a proprietary right over a portion of the open sea, or stipulated for the establishment of piracy, privateering or the slave trade.

4. There must be freedom of consent on the part of the contracting states and of their agents or negotiators. But in our interpreta-

tion of the phrase "freedom of consent," we should not forget that, as stated by one of our greatest authorities,

In international law force and intimidation are permitted means of obtaining redress for wrongs, and it is impossible to look upon permitted means as vitiating the agreement made in consequence of their use, by which redress is provided for. Consent, therefore, is conceived to be freely given in international contracts, notwithstanding that it may have been obtained by force, so long as nothing more is exacted than it may be supposed a state would consent to give, if it were willing to afford compensation for past wrongs and security against the commission of wrongful acts. And as international law cannot measure what is due in a given case, or what is necessary for the protection of a state which declares itself to be in danger, it regards all compacts as valid, notwithstanding the use of force or intimidation, which do not destroy the independence of the state which has been obliged to enter into them. When this point, however, is passed constraint vitiates the agreement, because it cannot be supposed that a state would voluntarily commit suicide by way of reparation or as a measure of protection to another.¹

However, as stated by the same authority,

Violence or intimidation used against the person of a sovereign, of a commander, or of any negotiator invested with powers to bind his state, stands upon a different footing. There is no necessary correspondence between the amount of constraint put upon the individual, and the degree to which one state lies at the mercy of the other, and, as in the case of Ferdinand VII at Bayonne, concessions may be extorted which are wholly unjustified by the general relations between the countries. Accordingly all contracts are void which are made under the influence of personal fear.

Freedom of consent does not exist where the consent is determined by erroneous impressions produced through the fraud of the other party to the contract. When this occurs, therefore;—if, for example, in negotiations for a boundary treaty the consent of one of the parties to the adoption of a particular line is determined by the production of a forged map, the agreement is not obligatory upon the deceived party.²

Writing of the effect of duress on treaties, T. J. Lawrence observes:

The only kind of duress which justifies a breach of treaty is the coercion of a sovereign or plenipotentiary to such an extent as to induce him to enter into arrangements which he would never have made but for fear on account of his personal safety. Such was the renunciation of the Spanish crown extorted

¹ Hall, *A Treatise on Int. Law* (7th ed., 1917), § 108, p. 336.

² *Ibid.* In favor of this view Hal. cites Heffter, § 86; Klüber, § 143, and Bluntschli, §§ 408-9.

by Napoleon at Bayonne in 1807 from Charles IV and his son Ferdinand. The people of Spain broke no faith when they refused to be bound by it and rose in insurrection against Joseph Bonaparte, who had been placed upon the throne.³

Oppenheim furnishes us with the following explanation of the meaning of the phrase "freedom of action" as applied to treaties:

The phrase "freedom of action" applies only to the *representatives* of the contracting states. It is *their* freedom of action in consenting to a treaty which must not have been interfered with and which must not have been excluded by other causes. A treaty concluded through intimidation exercised against the representatives of either party or concluded by intoxicated or insane representatives is not binding upon the party so represented. But a state which was forced by circumstances to conclude a treaty containing humiliating terms has no right afterwards to shake off the obligations of such a treaty on the ground that its freedom of action was interfered with at the time.⁴

Speaking of the effects of error and fraud, Oppenheim says:

Although a treaty was concluded with the real consent of the parties, it is nevertheless not binding if the consent was given in error, or under a delusion produced by a fraud of the other contracting party. If, for instance, a boundary treaty was based upon an incorrect map or a map fraudulently altered by one of the parties, such a treaty would by no means be binding. Although there is freedom of action in such cases, consent has been given under circumstances which prevent the treaty from being binding.⁵

In his discussion of this subject, Westlake remarks that the rule that a contract is vitiated by fraud applies, subject to the observation that some latitude must be allowed in negotiating treaties of peace to the right of misleading an adversary which is incident to war. One who while the negotiation continues is still an enemy cannot be expected to abstain from mis-statements bearing on his probable means of victory, which he was entitled to employ yesterday, and which, if the negotiation fails, he may find it necessary to repeat tomorrow. But states at peace are subject as moral beings to the duty of truth, and *there are frauds which could not be tolerated even between states at war*, such as the production of forged maps on questions of boundary.⁶

Even a cursory examination of the texts of these treaties in the imperfect form in which they are accessible to students would prove

³ Lawrence, *Principles of Int. Law* (4th ed.), § 134, p. 327.

⁴ Oppenheim, *Int. Law*, I, Peace, § 499.

⁵ *Ibid.*, § 500.

⁶ Westlake, *Int. Law*, I, Peace (2d ed.), p. 290. The *italics* are ours.

that several of the principles above stated have been grossly violated. A consideration of the circumstances under which they appear to have been made, and the methods apparently employed in their making, would show that they were tainted with fraud and illegality of all sorts. Without going into details, it appears that the leading Russian negotiators were in the pay of the German Government and acting, in part at least, as its agents.

While, as pointed out by Westlake in the passage cited above, a certain amount of misrepresentation in the negotiation of a treaty of peace might be expected in an adversary anxious to conceal the actual facts bearing upon his fighting strength, such toleration should certainly not extend to acts of bribery and treachery. May we not also say that treaties which in almost every article violate the fundamental principle upon which they were avowedly based—namely, that of self-determination without annexation or indemnities—are by that very fact alone rendered invalid?

These treaties might also be invalidated on the ground that they virtually destroy the political and economic independence of the States—Russia, Roumania and the Ukraine—with which they were negotiated and which they pretend to recognize as equals. With one hand they take away what they profess to give with another, and leave nothing but the shadow or shell of political independence. Thus, by the Roumanian Peace or the Treaties of Bucharest, which may be regarded as “model” treaties of this kind, the Central Powers have attempted to establish a permanent control over the main industries of Roumania. This unfortunate country is forced to sell, at prices to be determined by a “mixed commission,” all its surplus of grain, poultry, cattle, wool, fruit, wine, etc., for a period of seven years after 1919 as well as during the years 1918 and 1919.

The Central Powers also attempted to establish and maintain a complete control over the production and exportation of petroleum. All foreign oil companies are to be expropriated and the Roumanian Government is forced to grant for a term of thirty years to a German-Austrian Company, known as the Oil-Lands Leasehold Company, Limited, the “exclusive right to exploit all the Roumanian Crownlands . . . for the prospecting, for the extraction and manufacture of mineral oils, natural gas, mineral wax, asphalt, and any other bituminous products.” This company is granted all manner of rights and privileges, such as the use of public roads, waterways,

etc., exemptions from taxation, and the use of the state forests for lumber.

The same or similar rights and privileges in respect to crude oil and natural gas generally are granted to an Austro-German corporation known as the Commercial Monopoly Company.

In passing, we may simply note that the "Navigation Agreement" is in evident violation of the rights and privileges of the other European Powers on the Danube River.

The same or similar control as that exercised over oils, minerals and natural gas is asserted over and applied to all important industries, ways of communication, etc. In brief, by these treaties it was obviously intended to give Germany a complete strangle-hold on Roumania and reduce her to a complete state of political as well as economic dependence. Roumania was to be bound hand and foot to Austria-Germany.

The Brest-Litovsk and supplementary treaties with Russia may be pronounced invalid on similar grounds. They were signed under military or official pressure and reduced the Bolshevik Government to a state of economic and political impotence. Besides, they were negotiated with men who, whatever their intentions or motives may have been, were not free to act as representatives of the state they professed to represent. Like Mirabeau when he accepted the King's money, they may have imagined that they had not sold their principles and had not really entered the King's service; but even if they did not wear the German livery, Trotzky and his associates soon found themselves chained to the chariot wheels of their Austro-German masters and forced to do their bidding.

The Brest-Litovsk Treaties concluded between the Central Powers and the representatives of the Central Rada of the Ukraine Republic may be held to be invalid on the same or similar grounds as in the case of Russia and Roumania. In addition, it might be urged that according to alleged secret clauses of the treaty of February 9, 1918, the Polish territories of Cholm and Podolia, containing a population of nearly a million inhabitants (mainly Polish) were ceded to the Ukraine, without the consent of their inhabitants or even of the new Polish state so ostentatiously proclaimed by Germany and Austria in November, 1916. In fact, this treaty appears to create and sanction a sort of new partition of Poland.

To be sure, it cannot be maintained that such a disposition of

Polish territory constitutes a violation of international law, but it is a direct violation of the principle of self-determination upon which Germany and the Ukraine themselves professed to act. In any case it grossly violates the principles of nationalities and "consent of the governed," laid down by President Wilson as bases for the international relations of the future.

Taken as a whole, it is clear that the Brest-Litovsk and Bucharest Treaties constitute one of the most colossal frauds of modern times. They are tainted with all sorts of treacheries and illegalities, and must be pronounced null and void from every possible legal as well as moral and political point of view.

AMOS S. HERSHEY.

THE EGYPTIAN CAPITULATIONS

When Great Britain declared on December 19, 1914, that Egypt henceforth was to be considered no longer as a Turkish Suzerainty but as a British Protectorate, it also informed the new Sultan that: "His Majesty's Government have repeatedly placed on record that the system of treaties, known as the Capitulations, by which Your Highness's Government is bound, are no longer in harmony with the development of the country, but, in the opinion of His Majesty's Government, the revision of those treaties may most conveniently be postponed until the end of the present war." The Egyptian Council of Ministers on March 24, 1917, authorized the appointment of a special commission on the Capitulations for the study of the reforms which the eventual suppression of the Capitulations would necessitate. This commission was composed originally of three Egyptian members—the Ministers of Finance, of Instruction, and of Justice—of three British representatives, and of two other foreigners. Nine subcommissions were also appointed for the study of special matters requiring legislation. Judge Tuck, the American representative on the Mixed Court of Appeals, who has rendered long and valuable service, was made a member of the subcommission on commercial frauds.

The Commission on the Capitulations, after holding fifty-seven sessions, issued a statement in March, 1918, for the information of the general public, indicating the nature and the scope of the pro-

posed reforms which will be required by the suppression of the Capitulations. The main point of interest for foreigners, naturally, is the question of judicial guarantees. The intended reforms contemplate the establishment of a system of unified tribunals which shall take over the jurisdiction hitherto exercised by native tribunals, mixed tribunals, consular tribunals, and also by administrative commissions, in civil and commercial matters (other than questions of personal status); and in criminal matters. The contemplated reforms leave to the consular tribunals the right of jurisdiction in questions of personal status affecting foreigners, "as long as these tribunals shall be maintained."

This concession is of special interest because of the fact that so-called questions of personal status, such as marriage, divorce, inheritance, and guardianship, are regarded with peculiar consideration in the East, and are usually governed by religious laws, notably in the case of Moslems. The divergence in practice in these questions is so great that it would be most difficult, if not quite impossible, to secure a uniformity of legislation that would be acceptable to all and avoid serious complications. It should be observed, in passing, that while substantial agreement in this respect has been reached between the nations of Europe, considerable divergence still exists between Anglo-Saxon procedure and that of the Continent concerning nearly every phase of private international law, as well as in matters of personal status. Furthermore, the situation in this respect between the various States in the United States, particularly in the matter of divorce, is very far from satisfactory and demands uniformity of legislation.

As uniformity of legislation in most matters affecting personal status in Egypt would be excessively difficult, if not impossible, the decision of the Commission on the Capitulations to permit consular tribunals to continue to exercise jurisdiction over their own nationals "as long as these tribunals shall be maintained" is most prudent as well as just. In fact, it might be observed that all nations should show a broad tolerance to each other in all such matters not affecting public morals and safety where great divergence of legal practice exists. They might well permit foreigners sojourning in their midst to be judged, not merely according to their own law concerning personal status (which often is only ascertained with difficulty by means of letters rogatory, etc.), but even to leave such questions—under

proper safeguards—to their own consular officials. Such a liberal attitude among nations would facilitate justice and at the same time relieve territorial tribunals of work and of responsibilities which are irksome, and it would seem, unnecessary.

This may appear quixotic, but if uniformity of legislation in matters not directly affecting public morals and safety should be impossible, or even undesirable, such a tolerant spirit among nations would be in harmony with that *comitas gentium* to which the courts so often allude.

With further reference to the judicial guarantees for foreigners in Egypt, the proposals of the Commission on the Capitulations contemplate measures to safeguard the right of litigants to be judged according to their own laws governing personal status by the new tribunals to be established. This doubtless applies to cases where such jurisdiction might be preferred by the litigants, or where the proper consular courts may not exist.

Further judicial guarantees are contemplated to the effect that foreigners entitled to privileged treatment by treaty shall have the right to require that every suit, civil or criminal, that may concern them shall be brought before a tribunal composed of a majority of foreign magistrates, or, in the case of the Court of Assize, of at least a half. (The report does not indicate the exact number of foreigners who will be designated as magistrates, or the manner in which they will be appointed.) Foreigners entitled to privileged treatment may also require that criminal proceedings against them shall be instituted through a foreign magistrate. Other guarantees concern orders for arrest, perquisitions, etc.

The remaining portions of the report of the commission deal with the organization of the Bar, Civil and Criminal Legislation, the Civil and Commercial Codes, and Administrative Legislation. It is of interest to note in this connection the following statement:

In general, but especially in matters relating to commerce which have been the subject of the most recent English legislation, the commission has recognized that, in view of the special political situation in Egypt, it was necessary, in order to supply the deficiencies and remedy the defects of the actual law, to take into consideration the precedents of English law.

By way of general comment it should be observed that the suppression of the regime of the Capitulations in Egypt, with all its

attendant evils of special immunities for foreigners, of a consequent failure to insure an even justice for all, and also of special political pretensions by the Powers enjoying these privileges, is a logical necessity once the domination of Great Britain is recognized. Furthermore, it is obvious that Great Britain is bound to be as solicitous to safeguard the interests of her own nationals as any other Power. It follows, therefore, that, with certain reservations, other Powers should not be reluctant to submit their nationals to the same juridical regime to which Great Britain is prepared to submit her own nationals. The consent of other nations to the suppression of the regime of the Capitulations should not be made the subject of barter, as might be the case with Turkey. This consent should be given readily, once it can be shown that the administration of justice for foreigners is adequately safeguarded. But other Powers are bound to satisfy themselves first in regard to two aspects of the question. They will naturally desire guarantees concerning future legislation with respect to foreigners. They will also have to guard against the not impossible contingency of complete autonomy or independence for Egypt at some later time.

The consent of other Powers to the suppression of the regime of the Capitulations in final analysis, would seem therefore to depend on the willingness of Great Britain to assume, and to continue to maintain, full responsibility for the future administration of justice in Egypt.

The interest of the United States in this question is naturally not as great as that of certain other Powers. We certainly have no political interest. We have, however, considerable commercial, educational, and missionary interests. The extraterritorial rights of the United States in Egypt are based on the following: the treaty of 1832, the Treaty of Commerce of 1862, the Real Estate Protocol of 1874 with Turkey, the *Reforme Judiciaire* of 1876, and the Commercial Agreement and Customs Regulations of 1885.

PHILIP MARSHALL BROWN.

THE MILITARY SERVICE CONVENTIONS BETWEEN THE UNITED STATES
AND ASSOCIATED COUNTRIES

Shortly after the entrance of the United States into the war, the Government of the United States was approached by certain of the allied countries with proposals to enter into military service conventions, for the reciprocal conscription of the citizens or subjects of one country residing in the other. It appeared that similar agreements had been signed as between Great Britain, France, and Italy. After consideration of these agreements, with a view to their application to conditions in the United States, definite proposals were made by the United States in the summer of 1917, to the cobelligerents to enter into reciprocal military service conventions along somewhat different lines. Negotiations proceeded with several countries *pari passu*, until the winter, when it was deemed advisable to select one convention for immediate conclusion and approval by the Senate, in order that it might serve as a model for similar conventions with other countries. The large number of Local Boards in the United States which would be called upon to draft aliens under such conventions, and the great amount of work which the drafting of aliens would entail upon them, made it imperative that the proposed conventions with the various cobelligerent countries should be as nearly as possible alike. Obviously, there would be more or less confusion if the same 5,500 Local Boards in the United States were to undertake to induct aliens into the American Army in accordance with a different procedure for each of the several countries associated with the United States. As the negotiations with the British Government had progressed furthest, on account of the similarity of laws and methods in the two countries, the proposed convention with Great Britain was selected for immediate conclusion. On June 3, 1918, two conventions were signed with Great Britain, one with respect to the United Kingdom, and the other with respect to Canada. They were approved by the Senate on June 24, and the ratifications were exchanged on July 30th.

Meanwhile, a question had arisen as to the return to the United States, under the Immigration Laws, of certain classes of aliens who had voluntarily enlisted, or who had been drafted in the American forces under the Selective Service Laws, and Congress passed, on June 29, 1918, Joint Resolution No. 255, regarding the readmission

of aliens who had gone abroad to serve in the American forces. This resolution covered, first, resident aliens who had enlisted or had been conscripted for military service in the United States, and second, those who had taken out their first papers prior to April 6, 1917, and who had enlisted for service in the Czecho-Slovak, Polish, or other independent forces attached to the Army of the United States, or of one of its cobelligerents. Such aliens were, speaking generally, to be readmitted into the United States within one year after the termination of the war, notwithstanding certain provisions of the Immigration Laws. It will be observed, however, that the resolution did not include aliens, whether they had taken out their first papers or not, who went abroad to fight in any of the cobelligerent armies proper. Certain of the countries cobelligerent with the United States were unwilling to enter into military service conventions unless their citizens or subjects, who were resident in the United States, and who had gone abroad to serve in the armed forces of their own country and had fought the battles for the common cause, would be allowed readmission into the United States without regard to the Immigration Laws. This position seemed reasonable in view of the fact that the United States agreed under the convention to allow aliens of a convention country a certain period in which to return to their own country for military service in the common interest, but refused, under Joint Resolution No. 255, to readmit them to the United States and to their homes and families after fighting the arch-enemy abroad, and being disabled or wounded in such service. This was the situation until the passage of a Joint Resolution (No. 331), modifying Joint Resolution No. 255 so as to allow the readmission of aliens who go home for military service in their own armies, appeared possible.

When this Resolution seemed assured, negotiations with associated governments proceeded satisfactorily, and conventions were signed with Italy, Greece, and France on August 24, August 30, and September 3, 1918, respectively.

With the conclusion of these conventions, agreements had been reached with the cobelligerent countries who had the greatest number of aliens in the United States, except Russia. Negotiations with Russia had been suspended on account of the fall of the Russian Government. The conclusion of military service conventions with the associated countries, such as Belgium, Serbia, and the South

American belligerents, which had small numbers of citizens or subjects in the United States, was deemed unnecessary for the time being.

As has already been indicated, these conventions were almost identical in terms or effect. In general, they provided that the male citizens or subjects of either contracting country, residing in the other, should, within the periods limited in the convention, enlist or enroll in the forces of their own country, or return to their own country for the purpose of military service, or thereafter be subject to military service and entitled to exemption therefrom, under the laws or regulations in force from time to time in the country in which they remained. In order to have, for administrative purposes, uniform age limits for military service of aliens under all of the conventions, it was provided that the ages for military service in the United States of citizens or subjects of all convention countries should be 20 to 44 years, both inclusive, although these were not the ages for military service in those countries. These ages corresponded approximately to the lowest maximum and the highest minimum military age of the larger belligerent Powers at the time the ages were fixed for the conventions. The age at which American citizens abroad were to be conscripted under the conventions were the ages for the time being prescribed for compulsory military service in the United States. This provision was made elastic in order to take care of any expansion of the military ages in the United States beyond 21 to 30, as subsequently happened.

Under the conventions, the citizens or subjects of the contracting parties within the age limits mentioned were allowed sixty days from the date of the exchange of ratifications in which to enlist or enroll in their own forces, or depart for their own country for the purpose of military service, if they were liable to military service in the country in which they were at the said date. If they were not so liable, then they were allowed thirty days from the date on which liability should accrue in which to enlist, enroll, or depart. Similar periods were allowed after the refusal or expiration of certificates of exemption.

Each government had the right through its diplomatic or other representatives, to issue certificates of exemption from military service to their respective citizens or subjects abroad within the sixty or thirty day periods. Persons holding such certificates were, so long

as the certificates were in force, not liable to military service in the country in which they were.

The foregoing were the main provisions of the conventions. There were minor provisions in respect to facilitating the departure of persons who desired to go home for military service, and in respect to the preservation of nationality notwithstanding military service in a foreign army under the convention.

These conventions were made operative on the date of the exchange of ratifications, and were to remain in force until the expiration of sixty days after either of the contracting parties had given notice of termination to the other. Thereupon the citizens of either country incorporated into the military service of the other under these conventions were to be, as soon as possible, discharged therefrom.

The practical application of these conventions entailed the issuance of regulations in respect to procedure for obtaining certificates of exemption granted by the diplomatic representatives of the contracting parties. For example, in the United States the British Government issued extensive regulations governing the issuance of certificates of exemption by the British Ambassador to British subjects in the military service of the United States. Likewise, the United States prepared regulations for the guidance of the American Ambassador in London in the issuance of certificates of exemption. It was to the interest of the contracting parties not to exempt their citizens or subjects from military service by certificate, unless it was for the good of the common cause to do so. Consequently the regulations of the United States restricted the issuance of certificates of exemption by the American diplomatic representatives in general to Americans abroad who were engaged in an industry or occupation necessary to the prosecution of the war by the United States; who were necessary to the adequate and effective service of the United States abroad; who were officers or seamen employed in the sea service of any citizen or merchant of the United States; who had been honorably discharged from the naval or military service of the United States by reason of wounds or other disability incurred in the present war; and who had during the present war been taken prisoners, captured or interned by the enemy while serving in the forces of the United States or the cobelligerents and had been released or exchanged under parole or other agreement not to perform again military service.

As registration in the United States for military service was regarded as enlistment or enrollment within the meaning of the conventions, it was necessary also to provide regulations for the issuance of evidence of such registration, which would be recognized abroad and exempt such registrants for military service under the convention.

The mere fact that these conventions were being negotiated caused thousands of citizens or subjects of cobelligerent countries to enlist or go home for military service in their own forces before the conventions became effective. The negotiations of these conventions not only made available the man power of the cobelligerents that had refused to return home for military service, but they served also to make it available by means of mutual agreement between the United States and foreign countries rather than by the drastic action of conscription without the consent of the countries concerned. Doubtless, had the latter course been followed it could not have been executed without protest on the part of foreign governments that such action was contrary to the practice of nations and at variance with the treatment which the associated governments engaged in the prosecution of a common war should expect of each other.

LESTER H. WOOLSEY.

BRITISH JUSTICE IN PALESTINE

Many blessings follow in the train of a British army of occupation, but in a land where the very fountains of justice as well as the springs of water have long been polluted or rendered inaccessible, none could be more welcome than the introduction of water and justice in abundance. On June 21, 1918, a splendid system of water supply from distant and ancient springs was inaugurated in Jerusalem. And on June 29th a proclamation was issued re-establishing the judicial system in Ottoman territory under occupation by the Egyptian Expeditionary Force. Both of these notable achievements were accomplished without blare of trumpets, though deserving of more than passing notice.

Under Turkish misrule the judicial system was fairly simple and admirable in theory. In practice, justice was badly administered, as a rule, by officials who, being inadequately and irregularly paid,

were not infrequently corrupt. When the Turkish army withdrew, most of these officials withdrew also. The whole administration of justice was badly dislocated, therefore, and remained practically in abeyance for several months, except in the case of certain local magistrates. To remedy this unfortunate situation, the British authorities drafted the services of Major Orme Clarke, on active service with the army in France, formerly a barrister of great promise in London, and, at the time of the outbreak of war with Turkey, judicial adviser to the Turkish Government. In an incredibly brief time, Major Clarke was able by herculean efforts to reorganize this demoralized judicial system in a manner that deserves special comment.

In conformity with the accepted principles and precedents of international law, the chief aim of this reorganization has been to permit the normal processes of justice to function without undue interference with local law and customs by the military authorities. This has been accomplished by restoring the Ottoman judicial system and by rendering it more adaptable and serviceable. There are local magistrates' courts for the trial of misdemeanors as well as for civil and commercial questions of small importance. Permanent courts of first instance for the trial of more important cases not within the competency of the magistrates' courts exist in Jerusalem and Jaffa, while provision is made for the establishment of other special courts in districts where there may be no court of first instance. A Court of Appeal sits in Jerusalem and will also act as a Court of Assize to try serious offences. It is of interest to note that, in accordance with English practice, this court will be sent on circuit so that criminal cases may be heard without compelling the accused and the witnesses to journey to Jerusalem. The religious courts for the adjudication of questions affecting personal status, as, for example, marriage, divorce, inheritance, and guardianship, continue to function as before the military occupation. Moreover, under the benign autocracy of military rule, this simple judicial system will be subject to such checks and emendations by the senior judicial officer as may be required for the better administration of justice.

The law to be applied by these courts, as stated in the proclamation of June 29th, is "the Ottoman law in force at the date of the occupation, with such modifications as may be proper, having regard to international law and to the better administration of occupied territory."

With regard to the juridical status of "foreign subjects" in the occupied territory, the following Rules of Court, issued under date of August 1st by the senior judicial officer, warrant quotation textually quite as much for their excellent draftsmanship as for their particular interest:

1. The expression "foreign subjects" means subjects of any European or American state, and includes corporations constituted under the laws of such states, and religious or charitable bodies or institutions wholly or mainly composed of individuals the subject of such state, but does not include protected subjects.

2. Foreign subjects accused of an offence (other than a contravention) which is within the jurisdiction of a magistrate may claim to be tried by a British magistrate.

3. Foreign subjects accused of an offence which is beyond the jurisdiction of a magistrate may claim that their interrogation during the preliminary investigation should be undertaken, and the question of their release on bail and of their committal for trial should be decided, by a British examining judge.

4. Foreign subjects committed for trial may claim:

(a) In the case of offences triable before a court of first instance, that their trial should take place before a court the composition of which includes at least one British judicial officer.

(b) In the case of offences triable before the Court of Assize, that their trial should take place before a court the composition of which includes a majority of British judicial officers.

5. In civil actions over fifty pounds Egyptian in value, foreign subjects may claim that the final judgment in a court of first instance should be given by a court the composition of which includes at least one British judicial officer.

6. In civil or criminal cases foreign subjects may claim that their appeal should be heard before a court the composition of which includes at least one British judicial officer.

7. Persons claiming to be treated as foreign subjects who do not make their claim either on first appearance or in the first written pleading delivered to the court, whichever be the earlier, shall forfeit their right so to claim. Nevertheless the claim may be made on appeal notwithstanding that it has not been made in first instance.

8. The burden of proof that they are entitled to be treated as foreign subjects shall be upon persons claiming the rights aforesaid.

9. Where any person claims and substantiates his claim to be treated as a foreign subject the court shall be constituted in conformity with the foregoing rules, and, if necessary, the case shall be adjourned to enable this to be done.

It has furthermore been provided that:

When in any action properly brought before the civil courts a question of personal status arises the determination of which is necessary for the purposes

of the action, the civil courts may, . . . determine the question and may, to that end, have recourse, whether by way of stating a case of opinion or by oral examination, to a competent jurist having knowledge of the personal law applicable.

It will be noted that these provisions amply safeguard the interests of foreigners without raising the troublesome question of the Turkish Capitulations. While Great Britain and the United States, among other Powers, refused to acquiesce in the suppression of the regime of the Capitulations by the Porte on October 1, 1914, the military occupation of Ottoman territory does not *ipso facto* revive that regime. The supreme authority that makes itself responsible for the maintenance of law and order in occupied territory is naturally the army. The military authorities must necessarily reserve the right to make such rules and regulations as shall most effectively safeguard all interests. In the case of foreign subjects, as indicated by the legal provisions above quoted, the British military authorities, without attempting to revive the cumbrous machinery of the Capitulations involving the existence of consular tribunals, have admirably met the requirements of the situation. A foreign subject will not be left unprotected in the hands of native judicial officials, and in matters affecting his personal status—such as divorce and guardianship—he is entitled to be judged according to the law of his own country. There is therefore no need for consular tribunals which, as a matter of fact, no longer exist and which it would be difficult to re-establish under actual conditions of military occupation.

For the administration of this reorganized judicial system a number of British officials who have had special training in Egypt and elsewhere have been secured to serve as judges and in other capacities. Among these are Major J. H. Scott, author of *The Law Affecting Foreigners in Egypt*, and Major Norman Bentwich, editor of *International Law Cases*. Great care has been taken to secure the services of native officials of ability and integrity representing various races and creeds. These officials, moreover, are paid greatly enhanced salaries, amounting in many instances to an increase ranging from 70% to 100%. This should result in the material improvement of the status of the judicial officials and consequently in the elimination of an insidious cause of corruption under the Turkish regime.

This reorganization of the judicial system in occupied territory reveals the peculiar genius of the British for the administration of

dependencies, and particularly their sure instinct for justice and fair play. Perhaps the most striking feature of this great reform is that the aim has been, as in the bringing of water to Jerusalem, to carry justice wherever it may be most needed. No longer will the people be in the attitude of humble suppliants for justice from distant officials more concerned with "backsheesh" than with mercy. The courts will themselves go out to the people for the avowed purpose of protecting their rights. British officials of special ability will watch vigilantly that the old wrongs and abuses shall not return, and that public law and order shall be vindicated. With such a vivid object lesson of honorable dealing constantly before their eyes, the whole population cannot fail to be educated to higher standards of justice and morality.

It is a great satisfaction in the wreck and ruin of war to contemplate the blessings which inevitably follow British occupation of territory long groaning under corruption and oppression. The establishment of justice is the supreme justification and end of war: *fiat justitiam perit mundus!* Such preëminently is the sacred aim of the present world struggle. The achievements of Great Britain in this respect in the Holy Land call for the highest praise. They stand as a splendid monument to the men who have had the privilege of participating in so noble a work.

PHILIP MARSHALL BROWN.

DR. RESTREPO'S VIEWS OF THE RELATIONS BETWEEN LATIN AMERICA
AND THE UNITED STATES

In an address delivered by Dr. Carlos E. Restrepo, former President of Colombia, before the Ibero American Association, in the City of New York, on July 30, 1918, certain views are expressed which deserve to survive the occasion which gave them birth. Thus he says: "Let us live in peace, let us be industrious and upright, let us respect our given word, let us have liberty, and practice it, and right and strength and progress shall be ours." These things he considers as prerequisites.

In the next passage of his address Dr. Restrepo states what should in his opinion be done if the relations of the American states are to be what they should be:

And then, let us know one another, let us cultivate our mutual interests which are numerous, let us aid one another in our weakness, let us consolidate in our just causes, and we will see when this is accomplished how our international personality has become worthy of respect and is respected.

In the passages just quoted the distinguished ex-President has had the Latin American states in mind. He now passes to the great republic to the north, and states the simple truth when he says:

There is still another requisite to the attainment of a fruitful union, and this is the understanding with the United States and a reciprocal knowledge between them and our countries. Many of our differences grow out of mutual ignorance and lack of acquaintance. In this sense, there are many prejudices to be destroyed, and I feel sure that if we know one another better, we will esteem one another more.

He then proceeds to elaborate the thought, without, however, giving it concrete application to the dispute between Colombia and the United States, and its action in Panama and the Canal:

Each must be autonomous and enjoy its own sovereignty. Otherwise the weak may believe that what the Latin philosopher said of men is also true of nations, that friendship with the powerful was never loyal.

Let us be just, and confraternity will reign among the peoples of the earth. Let every one examine his own conscience and let every one see to it that in coming to the banquet of nations his feet are clean and his hands are pure.

If a wrong has been done, that it has been obliterated, if an offense that it has been pardoned, if an injustice that full reparation has been made therefor.

The distinguished visitor who honored the country with his presence was the Chief Executive of Colombia during the negotiation of the treaty between his State and the United States, by virtue whereof the United States bound itself to pay the sum of twenty-five million dollars in full settlement of the disputes existing between them.

The treaty negotiated by President Wilson's administration has been sent to the Senate of the United States. It has not yet been ratified; it can not be predicted whether it will or will not be approved, but it is in the interest of the Americas that disputes between them be settled peaceably; that each side feel the settlement to be just, and that the obstacles to a genuine and loyal friendship be removed in order that the American States may feel themselves united by the bonds of justice and hope to participate in its administration.

JAMES BROWN SCOTT.

LORD HALDANE'S DIARY OF NEGOTIATIONS BETWEEN GERMANY AND
ENGLAND IN 1912

Lord Haldane's visit to Germany in the month of February, 1912, in order to reach an agreement on the part of Great Britain and Germany upon the naval program of each country, was a failure. This was inevitably so, because Germany, on the one hand, insisted upon its naval program, which included a new squadron, and a law by virtue whereof its fleet should be materially increased; and because Great Britain, on the other hand, was determined to make such additions to its navy as would meet the German increase, and preserve the standard of superiority upon which Great Britain believed its safety depended. The Conference therefore broke up.

There was, however, an understanding that negotiations were not to drop; that Lord Haldane, upon his return, would privately inform the Imperial German Chancellor, von Bethmann-Hollweg, concerning the naval program; and that an attempt should be made in both countries to reach an agreement of a kind calculated to prevent war between them; to define the duty of neutrality, and in the event of war, to hit upon some method of localizing the conflict.

The German Ambassador, Prince Lichnowsky, was friendly, but as he himself has admitted in his "Memorandum," he did not have influence at home, and Germany apparently preferred to communicate with the British Government through Count Metternich.

The preoccupation of Germany seemed to be to obtain a free hand for any adventure which it might care to undertake in the future, and to have Great Britain tie its hands in so far as Germany was concerned, and it is believed that the "formula" of the Imperial German Chancellor, drafted early in 1912 for Lord Haldane, shows better than almost any document hitherto published the intent of Germany at that time to prepare itself for an approaching war. This document and the negotiations in connection with it were issued August 31, 1915, by the Foreign Office in the form of a statement "respecting the Anglo-German negotiations of 1912."

The formula already referred to, as submitted early in 1912 by the Imperial German Chancellor, is as follows:

1. The high contracting parties assure each other mutually of their desire of peace and friendship.

2. They will not either of them make or prepare to make any (unprovoked) attack upon the other, or join in any combination or design against the other for purposes of aggression, or become party to any plan or naval or military enterprise alone or in combination with any other power directed to such an end, and declare not to be bound by any such engagement.

3. If either of the high contracting parties become entangled in a war with one or more powers in which it can not be said to be the aggressor, the other party will at least observe toward the power so entangled a benevolent neutrality, and will use its utmost endeavor for the localization of the conflict. If either of the high contracting parties is forced to go to war by obvious provocation from a third party, they bind themselves to enter into an exchange of views concerning their attitude in such a conflict.

4. The duty of neutrality which arises out of the preceding article has no application in so far as it may not be reconcilable with existing agreements which the high contracting parties have already made.

5. The making of new agreements which render it impossible for either of the parties to observe neutrality toward the other beyond what is provided by the preceding limitation is excluded in conformity with the provisions in Article 2.

6. The high contracting parties declare that they will do all in their power to prevent differences and misunderstandings arising between either of them and other powers.¹

A little examination will show that this proposed agreement is what is called in law a "unilateral contract."

The first article stating that each country is desirous of peace and friendship with the other may be dismissed as the ordinary platitude of a preamble. The second seems fair upon its face, inasmuch as neither country is to enter into combination against the other "for purposes of aggression." Here, however, the difficulty begins, inasmuch as what may be aggression to one is not necessarily aggression to the other, and as in the absence of any definition, and also in the absence of any superior or authoritative interpretation, each would necessarily decide for itself. The nation placing a premium upon good faith might be bound; the party subordinating good faith to its real or alleged advantage might have a free hand. Throughout the present war the Imperial German Government has insisted that it has acted in self-defense, not aggressively, whereas Italy, the third member of the Triple Alliance, has refused to be bound by that treaty because the act of Germany beginning the war was aggressive, not in self-defense. The third article is open to the charge of uncer-

¹ *New York Times*, June 2, 1918, Sec. 5, p. 4.

tainty, due to the presence therein of aggression. However, a new element appears. This is "benevolent neutrality," which is to be maintained by the party at peace, when the other has become entangled in a difficulty with one or more powers "in which it can not be said to be the aggressor." In addition, the party at peace was to "use its utmost endeavor for the localization of the conflict." While it might be unfair to assume that Germany, in 1912, had in contemplation the situation of August, 1914, it is not unfair to remark that the language contained in this article applied, without straining, to such a state of affairs. Germany would have been free; Great Britain would have been tied and bound to observe "a benevolent neutrality" while Serbia was thrown to the dogs. The fourth article, like all the other articles, is fair upon its face, but unfair in its application. Nothing could seem fairer than that neither nation should be required to observe neutrality if it had entangling alliances requiring other action. Germany had such treaties; Great Britain did not, so that Germany would be free while Great Britain would be bound, if the treaty was not to be "a scrap of paper." The Triple Alliance was a treaty; the Entente was not an obligation. In the same way, article five, while outwardly fair, is unequal in its application inasmuch as Germany already had treaties of a kind which Great Britain would be forbidden by that article to make, thus perpetuating an inequality between the two. And article six, binding each of the contracting parties to prevent differences between them and other powers, was in the general, as well as in the special, interests of Germany and Great Britain.

Sir Edward Grey very properly refused the proposed formula, inasmuch as his duty was to preserve, not to betray British interests. Pressed by Count Metternich for a counter-proposal, he submitted, on March 14, 1912, and with the approval of his colleagues of the Cabinet, the following:

England will make no unprovoked attack upon Germany, and pursue no aggressive policy toward her.

Aggression upon Germany is not the subject, and forms no part of any treaty, understanding, or combination to which England is now a party, nor will she become a party to anything that has such an object.²

This formula appeared inadequate to the Count, who suggested the following alternative additional clauses:

² The New York Times, June 2, 1918, Sec. 5, p. 4.

England will therefore observe at least a benevolent neutrality should war be forced upon Germany; or

England will therefore, as a matter of course, remain neutral if a war is forced upon Germany.³

Sir Edward's proposal, as well as Count Metternich's counter-proposal, were based upon acceptance of British views in the matter of the naval program.

Sir Edward naturally disapproved of the counter-proposal, explaining that "if Germany desired to crush France, England might not be able to sit still, though, if France were aggressive or attacked Germany, no support would be given by his Majesty's Government or approved by England."⁴ The real object of the German proposal appears to have been as he said, "to obtain the neutrality of England in all eventualities, since, should a war break out, Germany would certainly contend that it had been forced upon her, and would claim that England should remain neutral."⁵ The facts are unfortunately with Sir Edward.

Negotiations, however, did not drop, and eventually Sir Edward proposed as a further formula that "the two powers being mutually desirous of securing peace and friendship between them, England declares that she will neither make nor join in any unprovoked attack upon Germany."⁶ To this he added the clause denying aggression on the part of Great Britain. In submitting this draft, Sir Edward explained that the use of the word "neutrality" might create a wrong impression, and that it would better therefore be avoided, and that, in any event, the substance of the agreement was more accurately expressed by the words "will neither make nor join in any unprovoked attack."

The British proposal was unsatisfactory to the Imperial German Chancellor, who stated that the increase of the German navy could only be halted by "an agreement guaranteeing neutrality"; as Count Metternich explained, "of a far-reaching character and leaving no doubt as to any interpretation."⁷

The up-shot of the whole matter is thus stated by Sir Edward Grey:

A few days afterward Count Metternich communicated to Sir Edward Grey the substance of a letter from the Chancellor, in which the latter said that, as

³ The New York Times, June 2, 1918, Sec. 5, p. 4.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

the formula suggested by his Majesty's Government was from the German point of view insufficient, and as his Majesty's Government could not agree to the larger formula for which he had asked, the Novelle [the bill then pending for the increase of the German navy] must proceed on the lines on which it had been presented to the Federal Council.⁸

Thus "the hope of a mutual reduction," to use Sir Edward Grey's language, "in the expenditure on armaments of the two countries," failed.

Lord Haldane's mission proved abortive, and negotiations between the two governments following the visit were likewise abortive, but they are worth recounting as showing that in 1912 Great Britain wished to avoid war, and that Germany wished to bind England to neutrality if war should break out.

JAMES BROWN SCOTT.

⁸ The New York *Times*, June 2, 1918, Sec. 5, p. 4.

CHRONICLE OF INTERNATIONAL EVENTS

WITH REFERENCES

Abbreviations: *Ann. sc. pol.*, Annales des sciences politiques, Paris; *Arch. dipl.*, Archives Diplomatiques, Paris; *B.*, boletín, bulletin, bolletino; *P. A. U.*, bulletin of the Pan American Union, Washington; *Cd.*, Great Britain, Parliamentary Papers; *Clunet*, J. de Dr. Int. Privé, Paris; *Current History*—Current History—A Monthly Magazine of the New York Times; *Doc. dipl.*, France, Documents diplomatiques; *B. Rel. Ext.*, Boletín de Relaciones Exteriores; *Dr.*, droit, diritto, derecho; *D. O.*, Diario Oficial; *For. rel.*, Foreign Relations of the United States; *Ga.*, gazette, gaceta, gazzetta; *Int.*, international, internacional, internazionale; *J.*, journal; *J. O.*, Journal Officiel, Paris; *L.*, Law; *M.*, Magazine; *Mém. dipl.*, Mémorial diplomatique, Paris; *Monit.*, Belgium, Moniteur belge; *Martens*, Nouveau recueil général de traités, Leipzig; *Official Bulletin*, Official Bulletin of the United States; *Q.*, Quarterly; *Q. dip.*, Questions diplomatiques et coloniales; *R.*, review, revista, revue, rivista; *R. pol. et parl.*, Revue Politique et Parlementaire; *Reichs G.*, Reichs-Gesetzblatt, Berlin; *Staats.*, Staatsblad, Netherlands; *State Papers*, British and Foreign State Papers, London; *Stat. at L.*, United States Statutes at Large; *Times*, The Times (London).

December, 1917.

- 11 ITALY—GREAT BRITAIN. Convention signed relative to military service of nationals of one country in the territory of the other. French text: *Clunet*, 45:873.

January, 1918.

- 3, 14 FRANCE—UNITED STATES. By an exchange of notes France effected with the United States an agreement relative to penal military jurisdiction and friendly occupation during the war. This agreement is identic with agreements made with Great Britain, December 15, 1915; Belgium, January 29, 1916; Serbia, December 1, 1916; Portugal, October 15, 1917. Texts: *Clunet*, 45:867.

April, 1918.

- 23 FRANCE. Announced that France would denounce most-favored nation clauses in treaties. *Clunet*, 45:968.
- 26 FRANCE—GERMANY. Agreement relative to prisoners of war signed at Berne. French text: *Clunet*, 45:846.
- 28 PORTUGAL. Señor Sidonio Paes elected President of Portugal. London *Times* (*wk. ed.*), May 3, 1918.

May, 1918.

- 4 LITHUANIA—GERMANY. German decree issued recognizing independence of Lithuania. *London Times (wk. ed.)*, May 17, 1918.
- 10 FRANCE—TURKEY. Announced that an accord had been signed relative to repatriation of civilians of the two countries. *Clunet*, 45:972.
- 12 ARGENTINE REPUBLIC—UNITED STATES. The American Ambassador at Buenos Aires addressed note to the Argentine Foreign Office calling attention to the necessity for a complete agreement as to the use to which the Hamburg-South American *Bahia-Blanco* was to be put, and whether it was to trade with enemy countries. *Clunet*, 45:928.
- 14 GREAT BRITAIN. Announcement that Great Britain would denounce commercial treaties with most favored-nation clauses. *London Times (wk. ed.)*, May 17, 1918.
- 15 COURTNEY OF PENWITH. Death of Lord Courtney of Penwith.
- 21 JAPAN—CHINA—UNITED STATES. Statement as to American position relative to Chino-Japanese treaty. *N. Y. Times*, May 22, 1918.
- 31 SERBIA—UNITED STATES. Reply of Serbia to the American note of May 30th relative to the oppressed nationalities of Austria-Hungary and expressing sympathy for the Czech-Slavs and Jugo-Slavs. *Official Bulletin*, 1918, 351.

June, 1918.

- 4 GREAT BRITAIN—UNITED STATES. Arbitration treaty renewed for five years. *London Times (wk. ed.)*, June 7, 1918.
- 12 RUSSIA—UKRAINE. Summary of treaty. *New York Times*, July 6, 1918.
- 13 RUSSIA—UNITED STATES. Bolshevik government asked of United States the return of the ships *Simferoister*, *Nijni-Novgorod*, *Tula* and *Kishinev*, taken over by the United States. *New York Times*, July 1, 1918.
- 21 GREAT BRITAIN. Imperial War Cabinet and Conference met in London. *London Times*, June 28, 1918.
- 24 GREAT BRITAIN—UNITED STATES. Treaty for reciprocal conscription of citizens, ratified by Senate. *Current History*, 8 (Pt. 2):221.

- 26 GERMANY. Herr Von Kuehlmann made statement in Reichstag as to aims and peace terms of Germany. Text: London *Times* (*wk. ed.*), June 28, 1918.
- 28 FINLAND—SWEDEN—GERMANY. Agreement concluded for demolition of forts on Aland Islands. London *Times* (*wk. ed.*), July 5, 1918.

July, 1918.

- 1 CZECHO-SLAVS. France recognized the independence of Czecho-Slavs. *Current History*, 8 (*Pt. 2*):224; New York *Times*, July 2, 1918.
- 3 RUMANIA—GERMANY. Rumanian peace treaty ratified by Germany on July 3rd, and by Rumania on July 5th. *Current History*, 8 (*Pt. 2*):225.
- 3 TURKEY. Death of Mohammed V, Sultan of Turkey. New York *Times*, July 4, 1918.
- 4 TURKEY. Valud Ed-din proclaimed Sultan of Turkey. London *Times* (*wk. ed.*), July 12, 1918.
- 6 RUSSIA—GERMANY. Count von Mirbach, German Ambassador to Russia, assassinated. More than 200 Social revolutionists of the Left were shot for participation in the assassination. Dr. Karl Helfferich was appointed to succeed Mirbach. *Current History*, 8 (*Pt. 2*):224, 438.
- 7 MURMAN COAST. Entire population broke off relations with Russia and joined the Entente. *Current History*, 8 (*Pt. 2*):224.
- 9 GERMANY. Dr. Richard von Kuehlmann, German Foreign Minister since August, 1917, resigned and was succeeded by Admiral von Hintze. New York *Times*, July 10, 1918.
- 10 CZECHO-SLOVAKS. Announced that a memorandum had been presented to the Japanese Foreign Minister and to the Allied Ambassadors at Tokyo, announcing that Czecho-Slovak troops desired to fight on the western front and did not want to be involved in Russia's internal affairs. *Current History*, 8 (*Pt. 2*):224.
- 10 SIBERIA. New provisional government established at Novonikolayevsk. The objects of the new Siberian Government include repudiation of the Brest-Litovsk Treaty and the establishment of a Russian republic with an autonomous Siberia. It is also proposed to rehabilitate the army and send troops against

- Germany. Russia's national debt would be acknowledged, Siberia assuming responsibility for her share. *Current History*, 8 (Pt. 2):224.
- 10 WOLOGDACHIE REPUBLIC. Established in Northern Russia. It comprises the territory from the White Sea to the Asiatic frontier. *Current History*, 8 (Pt. 2):224.
 - 11 RUSSIA. Soviet Government declared war on Murman coast. *London Times (wk. ed.)*, July 19, 1918.
 - 12 CHILE—GERMANY. The Chilean cabinet has refused to ratify the recent negotiations looking toward the renting of interned German steamers by the Chilean Government. The leading newspapers accept this action as a definite failure of the attempt to add the German vessels to the Chilean merchant marine. *Evening Star* (Washington), July 13, 1918.
 - 12 GERMANY—BELGIUM. Imperial Chancellor made statement before Reichstag Committee as to Belgium, etc. *London Times (wk. ed.)*, July 19, 1918.
 - 12 UNITED STATES—SWEDEN. Commercial agreement signed. *New York Times*, July 13, 1918.
 - 13 RUSSIA — TURKEY. Ratifications of Brest-Litovsk Treaty exchanged at Berlin. *London Times*, July 19, 1918.
 - 15 HAITI. Haiti declared war against Germany. *Current History*, 8 (Pt. 2):225.
 - 15 RUSSIA. Announced Soviet Government to be removed from Moscow to Murman—150 miles east. *London Times (wk. ed.)*, July 19, 1918.
 - 15 SIBERIA. Announced that the provisional government of Siberia had submitted to the Allies a request for joint military action. *Current History*, 8 (Pt. 2):438.
 - 16 AUSTRIA. Count Czernin, former Foreign Minister, made speech in House of Lords, outlining Austrian peace aims. *New York Times*, September 17, 1918.
 - 16 GERMANY—GREAT BRITAIN. Provisional agreement reached by delegates to Hague Conference for repatriation of prisoners. *London Times (wk. ed.)*, July 19, 1918.
 - 16 JAPAN—UNITED STATES. Diplomatic council approved Japanese reply to American proposal for intervention in Siberia. Text: *London Times (wk. ed.)*, July 26, 1918.

- 19 CHINA—VATICAN. Tai-Tcheng-lin appointed first Chinese Minister to Holy See. *London Times (wk. ed.)*, July 19, 1918.
- 19 HONDURAS — GERMANY. Honduras declared war on Germany. *Current History*, 8 (Pt. 2) :438; *Official Bulletin*, No. 367.
- 19 RUSSIA. Nicholas Romanoff, ex-Czar of Russia, was shot by order of the Soviet Government. It was announced that a counter-revolutionary movement had been discovered with the object of seizing the ex-Emperor, and that the Czecho-Slovak troops were approaching. All his property, as well as that of all the other members of his family, was forfeited to the Soviet Government. *Current History*, 8 (Pt. 2) :437; *New York Times*, July 21, 1918.
- 21 AUSTRIA-HUNGARY. The von Seidler cabinet resigned. Baron von Hussarek was appointed premier. *Current History*, 8 (Pt. 2) :438.
- 22 BRAZIL—URUGUAY. Brazil signed a treaty cancelling Uruguay's indebtedness to Brazil. *Washington Post*, July 24, 1918.
- 23 MURMAN REGIONAL COUNCIL OF DEFENSE—ALLIES. Text of an agreement between. *Current History*, 8 (Pt. 2) :438.
- 23 SIBERIA. Independence of Siberia proclaimed with capital at Omsk. *Current History*, 8 (Pt. 2) :438.
- 24 GERMANY—RUSSIA. Dr. Karl Helfferich appointed Ambassador to Russia. *New York Times*, July 25, 1918.
- 24 RUSSIA. Russian Government sent out a purported text of an agreement between Great Britain, United States and France with the Murman Regional Council. *London Times (wk. ed.)*, July 26, 1918.
- 25 AUSTRIA. Baron von Hussarek succeeded von Seydler as Premier of Austria. *New York Times*, July 26, 1918.
- 26 TURKESTAN. Announced that the fifth National Congress of Turkestan had proclaimed Turkestan a republic in alliance with Russia. *Current History*, 8 (Pt. 2) :437; *New York Times*, July 27, 1918.
- 24 UKRAINIA — GERMANY. Exchanged ratifications of treaty of peace. *London Times (wk. ed.)*, August 2, 1918.
- 25 RUSSIA. The allied embassies left Vologda, having been notified by M. C. Teherin, the Bolshevik Foreign Minister, that Vologda was in danger from bombardment. *Current History*, 8 (Pt. 2) : 438.

- 26 IMPERIAL WAR CONFERENCE. Held closing session. London *Times (wk. ed.)*, August 2, 1918.
- 26 ROUMANIA—UKRAINIA. Ukrainian Government announced the abandonment of its claims to Bessarabia, and diplomatic relations with Roumania were resumed. Bessarabia, which was ceded to Ukraina under the treaty with Germany, annexed itself to Roumania on May 23rd. *Current History*, 8 (Pt. 2): 438.
- 27 FINLAND. Crown of Finland offered to Duke Adolf Frederick of Mecklenburg-Schwerin and accepted. New York *Times*, July 28, 1918.
- 28 KARS, BATUM AND ARDAHAN. By plebiscite decided to unite with Turkey. London *Times (wk. ed.)*, August 23, 1918.
- 29 CHINA. Department of State approved loan to China by American bankers. New York *Times*, July 30, 1918.
- 29 ASTRAKAN, THE DON, THE COSSACKS. Announcement made that these governments mutually recognized their autonomy and promised each other mutual assistance in the annexation of other districts whose possession they considered necessary. *Current History*, 8 (Pt. 2): 437.
- 29 RUSSIA. Lenine, head of Bolshevik Government, declared informally that a state of war exists between Russia and the Allies. New York *Times*, July 30, 1918.
- 30 GREAT BRITAIN — UNITED STATES. Ratifications exchanged of military service convention between. Text: *Official Bulletin*, No. 374.
- 31 MURMANSK. American, British and French Ambassadors arrived at Murmansk. London *Times*, August 5, 1918.
- 31 TURKEY—ARMENIA. According to telegram received by the Chairman of the Armenian Refugees Fund in London, a peace treaty between Turkey and the Armenian Independent Republic of Ararat has been ratified at Constantinople. Ararat has a population of 400,000, and the capital is at Erivan. London *Times*, August 1, 1918.
- 31 ROUMANIA—UKRAINIA. Agreement reached through Denmark by which Russian province of Bessarabia will go to Roumania, in exchange for commercial concessions. *Review of Reviews*, 58: 247.

August, 1918.

- 3 UNITED STATES. President Wilson announced the plan to co-operate with the Allies in aiding the Czecho-Slovak troops, guarding the north ports from the Germans, and to send a civilian commission to give educational and economic aid. *Current History*, 8 (Pt. 2):438.
- 4-21 HOLLAND—GERMANY. Holland protested to Germany against violation of Dutch neutrality by aeroplanes. *London Times*, September 14, 1918.
- 4-5 UNITED STATES. United States issued statement as to American-Japanese action in Siberia and Archangel. Text: *Official Bulletin*, 1918, p. —; *London Times (wk. ed.)*, August 9, 1918.
- 5 JAPAN. Japan announced that troops had been dispatched to Vladivostok. *Current History*, 8 (Pt. 2):438.
- 7 UKRAINE—REPUBLIC OF THE DON. Treaty signed by which Rostoff, Toganovog, and the surrounding districts, fall to the Don. *London Times*, August 12, 13, 1918.
- 7 GOVERNMENT OF THE COUNTRY OF THE NORTH. Addressed proclamation to the people of the district declaring the Bolshevik regime at an end. *Current History*, 8 (Pt. 2):437.
- 8 GERMANY—SPAIN. Spain announced that another note had been sent to Germany concerning torpedoing of Spanish ships. On August 17th, announcement made that Spain had notified Germany of her intention to compensate herself for future outrages by confiscation of a corresponding amount of tonnage from German shipping in Spanish ports. *Current History*, 8 (Pt. 2):435.
- 9 CHINA. A proclamation signed by Wu Ting Fang, and other counsellors of the Union Military Government of Canton, has been dispatched to the foreign consular body, requesting recognition of the military government of Canton. *London Times*, August 9, 1918. On August 8th the Canton Parliament appointed a committee to draft a constitution. *London Times*, August 12, 1918.
- 9 SIBERIA. British representatives at Vladivostok, Murmansk and Archangel published a declaration that the Allies were coming as friends and wanted no territory. On the same day the Chinese and French troops landed at Vladivostok. *Current History*, 8 (Pt. 2):438.

- 11 HOLLAND—GREAT BRITAIN. Holland protested against violation of Dutch territory by British aeroplanes on August 11th. *London Times*, August 31, 1918.
- 12 GREAT BRITAIN—HOLLAND. Great Britain, in reply to Dutch note, denies laying mines in Dutch territorial waters. *London Times*, August 12, 1918.
- 12 MEXICO. Mexico modified decree of February 22, 1918, inflicting excessive taxation on foreign oil interests. *Diario Oficial*, August 13, 1918.
- 13 HOLLAND—GERMANY. Agreement signed relative to trade with Scandinavia. *London Times*, August 14, 1918.
- 13 JAPAN—CHINA. Japan announced that the two countries had decided on course of action to check enemy menace on Manchurian frontier. Japanese troops have been moved to that region. Chinese sovereignty will be respected. *London Times*, August 19, 1918.
- 13 CZECHO-SLOVAKS—GREAT BRITAIN. Great Britain formally recognized the Czecho-Slovaks as an allied nation and the Czecho-Slovak armies as an allied force engaged in warfare against the Central Powers. *Current History*, 8 (Pt. 2):437.
- 13 GERMANY—CHINA. *North German Gazette* says Germany will protest against Chinese prize law as being a violation of the Declaration of London. *London Times*, August 14, 1918.
- 13 GERMANY—RUSSIA. Dr. Helfferich, German Ambassador at Moscow, left Moscow and will reside at Pikoff for the present. *London Times (wk. ed.)*, August 16, 1918.
- 14 INTERNATIONAL WATERWAYS COMMISSION. In session at Montreal to consider applications by private American interests for development of the Long Sault Rapids power project, and by the New York and Ontario Power Company for approval to reconstruct, etc., its dam on the St. Lawrence River. Opposition is being filed by the Canadian Government. *London Times*, August 14, 1918.
- 14 MEXICO. Mexico replied to British protest against oil decree of February 22, 1918. *Review of Reviews*, 58:247.
- 16 RUSSIA. Allied consuls left Moscow. *London Times (wk. ed.)*, August 23, 1918.
- 16 PAN SLAV CONGRESS. National Jugo-Slav Council in session at Laibach. *London Times*, August 26, 27, 1918.

- 17 UNITED STATES—RUSSIA. United States has severed diplomatic relations with Bolshevik Government of Russia. Bolshevik Agent M. Litvinoff is to be given passports as soon as British consul at Moscow has reached Stockholm. *London Times (wk. ed.)*, August 23, 1918.
- 19 HOLLAND—GERMANY. Protest against violation of Dutch territory by German aeroplane on August 19th. *London Times*, August 31, 1918.
- 19 TURKEY—AZERBAIJAN. Commercial treaty signed. *London Times*, August 20, 1918.
- 21 AUSTRIA—ITALY. Conference on prisoners of war opened. Personnel: *London Times*, August 23, 1918.
- 22 TURKEY—UKRAINE. Exchange of ratifications of Brest-Litovsk Treaty. *London Times*, August 24, 1918.
- 22 BRAZIL. Asked by Allies to express its views as to restoration of independence of Poland as one of the conditions of peace. *London Times (wk. ed.)*, August 23, 1918.
- 24 UNITED STATES—ITALY. Military service convention signed. *New York Times*, August 25, 1918.
- 24 SPAIN—GERMANY. Summary of German reply to Spanish note. *London Times*, August 26, 1918. On August 25th it was announced that Germany had accepted Spanish terms. *London Times*, August 27, 1918.
- 24 *Lusitania*. Judge J. M. Mayer, of Federal District Court of New York, dismissed without costs claims in 67 suits for damages of approximately \$6,000,000 brought against Cunard Steamship Company as result of sinking of *Lusitania*. Sinking held to have been an act of piracy. Text of decision: this JOURNAL, page 862; *Current History*, 9 (Pt. 1):145.
- 26 UKRAINE. Ukrainian National Council formed in Paris. Issued a manifesto addressed to the Allied peoples appealing for their moral support in the struggle of the people of Ukraine against German violence. *London Times*, August 26, 1918.
- 27 RUSSIA—FINLAND. Announced that peace negotiations had been broken off. *London Times*, August 28, 1918.
- 27 GERMANY—NORWAY. Germany replies to Norwegian protest against sinking of Norwegian ships outside danger zone. Summary: *London Times*, August 28, 1918.
- 27-29 GERMANY—RUSSIA. Three supplementary treaties to the

- treaty of Brest-Litovsk signed at Berlin, including a financial treaty and a treaty dealing with civil law. *London Times*, August 29, 1918; summary, *Current History*, 9 (Pt. 1):63.
- 30 UNITED STATES—GREECE. Treaty signed providing for reciprocal military service of citizens. Ratifications exchanged September 19, 1918. Text: *Congressional Record*, Vol. 56, No. 218, p. 1167; *Official Bulletin*, No. 418.
- 30 NICARAGUA—HONDURAS. Treaty signed relative to boundary dispute. Agreement to withdraw all troops from their borders and to submit the controversy to the United States. *London Times*, August 31, 1918.
- 30 GREAT BRITAIN—NORWAY. Announced negotiations with a view to supplying Norwegian shipbuilding yards with raw materials. *London Times (wk. ed.)*, August 30, 1918.
- 31 HOLLAND. Jonkheer Ruijs de Beerenbrouck, the Governor of Limburg, appointed Premier of Holland. *New York Times*, September 2, 1918.
- 31 LITHUANIA. The State Council selected Duke William of Urach as sovereign, under the title of King Medova. *Current History*, 8 (Pt. 2):438.

September, 1918.

- 1 RUSSIA. Bolshevik troops attacked British Embassy, which was sacked, and Captain Francis Crombie, naval attache, killed. *London Times*, September 5, 1918.
- 2 GERMANY — BAVARIA — SAXONY. Announced that Bavaria and Saxony had decided to establish separate legations at Sofia. According to the Constitution of the German Empire, the Kaiser is the only representative abroad. *New York Times*, September 3, 1918.
- 2 SCANDINAVIA. Scandinavian Inter-Parliamentary Congress opened at Copenhagen. *London Times*, September 6, 1918.
- 3 FRANCE—UNITED STATES. Treaty signed providing for reciprocal military service of citizens. *Congressional Record*, Vol. 56, No. 218:11367; *Official Bulletin*, No. 418.
- 3 UNITED STATES—CZECHO-SLOVAKS. United States formally recognized the Czecho-Slovaks as a belligerent nation and the Czecho-Slovak National Council, which has its headquarters in Washington, as a *de facto* belligerent government clothed

- with proper authority to direct the military and political affairs of the Czecho-Slovaks. France, Great Britain and Italy have also recognized the Council and Army. The three principal officers of the Council are Professor Masaryk, General Milan R. Slefank, Dr. Edward Bones. *New York Times*, September 4, 1918.
- 5 SIBERIA. Entente authorities at Vladivostok have refused to recognize the Siberian Government headed by General Horwath and have appointed a committee of seven to administer municipal affairs. *New York Times*, September 14, 1918.
 - 5 TURKEY—UNITED STATES. Department of State announced that Turkey had disclaimed any intention of affronting the United States at Tabriz, and orders have been given the Commander-in-Chief in Persia to remove troops from American hospital, and to respect American interests there. When Tabriz was occupied in June the American consulate was sacked and the American hospital seized. The United States at once asked for an explanation. *London Times*, September 7, 1918; *New York Times*, September 6, 1918.
 - 6 RUSSIA—GERMANY. Ratifications exchanged at Berlin of Russo-German supplementary treaty. *London Times*, September 7, 1918. Summary: *London Times*, September 8, 1918; *New York Times*, September 11, 1918.
 - 7 HOLLAND—GERMANY. Announced that Holland had protested to Germany against destruction of vessels within "barred zone," against sinking of seven Dutch fishing vessels on August 24th, and against forcing various skippers to sign a declaration the contents of which were unknown to them. *London Times*, September 7, 1918.
 - 7 FINLAND—GERMANY. Treaty of alliance signed. *Current History*, 9 (Pt. 1):63.
 - 7 SWITZERLAND—GERMANY. Announced that further agreements have been made regarding free conduct for ships carrying goods to Switzerland. *London Times*, September 7, 1918.
 - 8 RUSSIA. Neutral diplomats jointly protested to M. Tchitcherin, the Bolshevik Foreign Minister, against wholesale execution of citizens and officers. *New York Times*, September 9, 1918.
 - 9 ITALY. Under the Italian law providing for seizure of property of enemy subjects, an Italian judge has decided that the prop-

- erty of the Emperor of Austria in the province of Emilia could not be seized, the Emperor not being an "enemy subject; as everybody in Austria is the Emperor's subject, he can be nobody's subject." *New York Times*, September 9, 1918.
- 9 RUSSIA. Soviet Government issued statement that French and English diplomats will be put in the care of the Dutch Government and allowed to depart as soon as Bolshevist representative in London, M. Eitvineff, with his collaborators, is granted safe passage. *New York Times*, September 10, 1918.
 - 10 FRANCE—NORWAY AND SWEDEN. France denounced, from September 10th, the treaty of July 13, 1902, between France, on one part, and Norway and Sweden, on the other, which provided for the temporary extension of the commercial and shipping treaty of September 10, 1881, between those countries. *London Times*, September 6, 1918.
 - 10 RUSSIA. Statement of Russian Embassy at Washington as to government of northern Russia, of which Nicholas Tscharkovsky is president. Text: *New York Times*, September 11, 1918.
 - 11 FINLAND. Prince Frederick Charles of Hesse chosen King of Poland. *London Times*, September 12, 1918.
 - 13 PANAMA. Dr. Belisario Porras elected President of Panama. He was president of Panama from 1912-1916, and since then Minister at Washington. *London Times*, September 14, 1918.
 - 13 SIR SAMUEL EVANS, President of the British Prize Court, died. He was President of the Probate, Divorce and Admiralty Division of the High Court of England since 1910. *New York Times*, September 14, 1918.
 - 15 BELGIUM—GERMANY. German peace offer made to Belgium. Text: *New York Times*, September 16, 1918.
 - 15 FRANCE — SWITZERLAND. France has denounced Franco-Swiss Commercial Convention of October 20, 1916, and Franco-Swiss treaty of February 23, 1882. *London Times*, September 16, 1918.
 - 16 AUSTRIA. Addressed a communication and note to belligerents and neutrals suggesting meeting for preliminary and non-binding discussion of war aims. Texts: *Current History*, 9 (Pt. 1):64; *Official Bulletin*, No. 414.
 - 17 UNITED STATES. American reply to Austrian peace note of September 16, 1918. Text: *Official Bulletin*, No. 414.

- 18 DENMARK—UNITED STATES. Commercial agreement signed. Summary: New York *Times*, September 19, 1918.
- 18 UNITED STATES. Hon. John Wm. Davis, Solicitor General of the United States, appointed American Ambassador to the Court of St. James, succeeding Hon. Walter Hines Page. New York *Times*, September 19, 1918.
- 20 FRANCE—SOUTHERN SLAVS. *Echo de Paris* announces that France will recognize Southern Slavs. New York *Times*, April 21, 1918.
- 20 GERMANY—AUSTRIA. German reply to Austrian peace note. Text: New York *Times*, September 21, 1918.
- 21 UNITED STATES—RUSSIA. United States sent telegram to Allied and neutral governments asking if they would consider immediate action to impress upon Bolsheviki the aversion with which civilization regards their present wanton acts. New York *Times*, September 22, 1918.
- 21 CHILE—UNITED STATES. Beltran Matheu has been appointed Chilean Ambassador to the United States, succeeding Santiago Aldunate Bascuman, who died in April, 1918. New York *Times*, September 25, 1918.
- 23 BULGARIA. Reply to Austrian peace note. Summary: New York *Times*, September 24, 1918.
- 24 BULGARIA. Official Bulgarian statement announcing that Bulgaria had initiated a proposition for securing an armistice and peace. Text: New York *Evening Post*, September 28, 1918.
- 24-30 BULGARIA. Bulgaria asked the French Commander-in-Chief in Macedonia for a meeting to arrange conditions of an armistice of 48 hours to permit arrival of the authorized delegates of Bulgaria to arrange eventual peace. The French commander refused to suspend operations, but offered to receive duly qualified delegates of Bulgarian Government. Text of French reply: New York *Evening Post*, September 28, 1918. On September 28th Great Britain replied to Bulgarian request. Text of Bulgarian official announcement dated September 24th: New York *Evening Post*, September 28, 1918. Allies' terms of armistice accepted by Bulgaria. Summary of terms: New York *Times*, October 18; armistice signed for the Allies by General Franchet d'Esperey, Allied Commander, at midnight, September 29, 1918.

- 25 BRAZIL—AUSTRIA. Brazilian minister to Austria closed the legation and left for Brazil. *New York Times*, September 26, 1918.
- 27 GERMANY. Count von Hertling, German Imperial Chancellor, resigned. *New York Times*, September 28, 1918.
- 29 GERMANY—UNITED STATES. Germany, through Swiss legation, sent ultimatum to United States that "reprisals will be taken" if by October 1st no satisfactory answer is forthcoming to German protest as to use of shot guns by American troops. *Washington Post*, September 30, 1918. Text of American reply of September 30: *Washington Post*, October 1, 1918.
- 30 GERMANY. Resignation of Chancellor von Hertling and Foreign Secretary von Hintze accepted by the Emperor. Prince Maximilian of Baden appointed Imperial German Chancellor, October 3, 1918. *New York Times*, October 1, 1918.

INTERNATIONAL CONVENTIONS

International Office of Public Hygiene, Dec. 9, 1907. Accession of Greece. *J. O.* March 10, 1918.

KATHRYN SELLERS.

Errata. Vol. 12, p. 185.

Under the "List of Nations at War" should be added the following, omitted from the list in the Official Bulletin:

1916, September 1—Roumania vs. Bulgaria.

It is also to be noted that the statement as to San Marino is in error, no declaration of war having been issued.

PUBLIC DOCUMENTS RELATING TO INTERNATIONAL
LAW.

GREAT BRITAIN ¹

Aliens' Restriction Order. Order in Council further amending the. June 4, 1918. (St. R. & O. 1918, No. 603.) 1½d.

Customs. Proclamation prohibiting the exportation of certain articles to Switzerland. June 25, 1918. (St. R. & O. 1918, No. 764.) 3d.

Dutch convoy to the East Indies. Correspondence respecting the despatch of a. Miscellaneous No. 13 (1918). (Cd. 9028.) 3d.

Military Law, Manual of. 1914. (Reprinted 1917.) 4s.

"Period of the War," Reports of the committee appointed by the Attorney-General to consider the legal interpretation of the term. (Cd. 9100.) 8d.

Prisoners of war and civilians. Agreement between the British and Ottoman Governments respecting. Miscellaneous No. 10 (1918). (Cd. 9024.) 2½d.

Prize money. Draft proclamation granting prize money to the Fleet and regulating its distribution. (Cd. 9122.) 1½d.

———. Order in Council, April 27, 1918, under the Naval Agency and Distribution Act, 1864, regulating the shares in which prize bounty for the taking or destroying of armed enemy ships, and of the net proceeds of salvage awards, and of customs, slave trade, and pirate captures, shall be distributed. (St. R. & O. 1918, No. 539.) 1½d.

Requisitioning of Dutch ships by the Associated Governments. Correspondence with the Netherlands Government respecting the. Miscellaneous No. 11 (1918). (Cd. 9025.) 2½d.

Shipping and shipbuilding industries after the war. Reports of the Departmental Committee appointed by the Board of Trade to consider the position of the. First report.—The German control sta-

¹ Parliamentary and Official Publications of Great Britain may be obtained, for the amount noted, from The Superintendent of Publications, H. M. Stationery Office, Imperial House, Kingsway, London, W. C. 2.

tions and the Atlantic emigrant traffic. Second report.—Shipbuilding and marine engineering. Final report.—Reconstruction of the British mercantile marine; international competition and navigation policy; German competition; general recommendations; summary. With appendices. (Cd. 9092.) 1s. 7½d.

Trading with the enemy. Report by the committee appointed to advise the Board of Trade on matters arising under the Trading with the Enemy Amendment Act, 1916. (Cd. 9059.) 1½d.

Trading with the Enemy (Statutory List) Proclamation, together with the consolidated statutory list of persons and firms in countries, other than enemy countries, with whom persons and firms in the United Kingdom are prohibited from trading. With notes for British merchants engaged in foreign trade. Complete to May 31, 1918. No. 56a. 8½d.

Treatment by the Netherlands Government of belligerent merchant vessels whose status has been changed as the result of an act of war. Correspondence. Part I.—Cases of the steamships *Maria* and *Huntstrick*. Part II.—German ships at Antwerp at the outbreak of war. Miscellaneous No. 12 (1918). (Cd. 9026.) 5½d.

UNITED STATES ²

Alien enemies. Certain citizens or subjects of Germany or Austria-Hungary included as "enemies" for purposes of Trading with the Enemy Act, reports required as to their property. Proclamation, May 31, 1918. 2 p. (No. 1454.) *State Dept.*

———. Proclamation extending regulations prescribing conduct of alien enemies to women. April 19, 1918. 2 p. (No. 1443.) *State Dept.*

———. Registration of German alien females, General rules and regulations prescribed by Attorney General under authority of proclamation of President of United States, dated April 19, 1918. 48 p. *Justice Dept.*

Alien property. Executive orders authorizing private sales of: Nos. 2843-2847, April 24, 1918; Nos. 2857-2858, May 7, 1918. *State Dept.*

² Where prices are given, the document in question may be obtained for the amount noted, from the Superintendent of Documents, Government Printing Office, Washington, D. C.

Alien property. Executive Order concerning certain sales to be conducted by Alien Property Custodian pursuant to Trading with the Enemy Act and amendments thereto. July 15, 1918. 1 p. (No. 2914.) *State Dept.*

———. Executive Order with respect to Orenstein-Koppel Co. June 15, 1918. 5 p. (No. 2885.) *State Dept.*

———. Proclamation taking title to and possession of property on Hudson River owned by North German Lloyd Dock Company and Hamburg-American Line Terminal and Navigation Co. June 28, 1918. 1 p. (No. 1464.) *State Dept.*

Alien Property Custodian. Circular of information concerning powers, etc., of. 1918. 1 p. *Alien Property Custodian.*

———. Executive Order prescribing rules and regulations respecting exercise of powers and authority and performance of duties of, under Trading with the Enemy Act and prior Executive Orders pursuant thereto, and respecting deposit and investment of moneys received by or for account of. Feb. 28, 1918. 8 p. *State Dept.*

Aliens. Joint Resolution authorizing readmission to United States of certain aliens who have been conscripted or have volunteered for service with military forces of United States or cobelligerent forces. Approved June 29, 1918. 1 p. (Public Resolution 34.) 5c.

Arbitration. Agreement between United States and France, extending duration of convention of Feb. 10, 1908; signed Washington, Feb. 27, 1918, proclaimed May 16, 1918. 4 p. (Treaty Series No. 631.) [English and French.] *State Dept.*

———. Agreement between United States and Norway, extending duration of convention of April 4, 1908; signed Washington, March 30, 1918, proclaimed July 12, 1918. 4 p. (Treaty Series No. 632.) [English and Norwegian.] *State Dept.*

Birds. Act to give effect to convention between United States and Great Britain for protection of migratory birds, concluded at Washington Aug. 16, 1916. Approved July 3, 1918. 3 p. (Public 186.) 5c.

British control of imports and exports, with lists of prohibited goods. By L. Domeratsky. June, 1918. 32 p. (Tariff Series No. 39.) Paper, 5c.

Copyright. Proclamation extending benefits of Act of March 4, 1909, concerning copyright controlling parts of instruments serving

to reproduce mechanically musical works, to citizens of France. May 24, 1918. 1 p. (No. 1452.) *State Dept.*

Crignier, Madame. Claim of French Government on account of losses sustained by French citizen in connection with search for body of John Paul Jones, Report in relation to, with correspondence in regard to claim. 13 p. (S. doc. 231.)

Diplomatic and consular service. Information regarding appointments and promotions in. 1918. 18 p. *State Dept.*

Enemy Trading List (revised). Supplements Nos. 1-7, containing additions, removals and corrections, April 15, May 1, May 17, May 31, June 14, June 28, and July 12, 1918, respectively. *War Trade Board.*

Exports. Executive Order vesting in Attorney-General all power and authority conferred upon the President by provisions of Sec. 2 and 7 of Title 6 of Act to punish acts of interference with foreign relations, neutrality, and foreign commerce of United States, to punish espionage, and better enforce criminal laws of United States. May 31, 1918. 1 p. (No. 2874.) *State Dept.*

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Foreign sovereignties and their rulers, List of. 12th ed. June 1, 1918. 1 p. *Naturalization Bureau.*

Great War, 1914—. Plain issues of the war. By Elihu Root. 1918. 15 p. (Loyalty Leaflets No. 5.) *Public Information Committee.*

International High Commission. Statements of L. S. Rowe and others relating to. 1918. 21 p. (Diplomatic and consular appropriation bill.) *Foreign Affairs Committee.*

Maritime law. Instructions for Navy governing maritime warfare, June, 1917. 79 p. *Navy Dept.*

Mexico. Address of President of United States concerning attitude of United States toward Mexico. June 7, 1918. 6 p. (S. doc. 264.)

Military service. Convention relating to military service of British subjects in United States and of citizens of United States in Great Britain and Canada: (pt. 1, Convention relating to service of citizens of United States in Great Britain and of British subjects in United States, signed Washington, June 3, 1918; pt. 2, Convention

relating to service of citizens of United States in Canada and of Canadians in United States, signed Washington, June 3, 1918.) 7 p. *State Dept.*

Naturalization. Act to amend naturalization laws and to repeal certain sections of the Revised Statutes and other laws relating to naturalization. Approved May 9, 1918. 7 p. (Public 144.) 5c.

Naturalization laws and regulations, May 15, 1918. 39 p. *Naturalization Bureau.*

Neutrality. Diplomatic correspondence with belligerent governments relating to neutral rights and duties. 1918. (European War No. 4.) *State Dept.* Paper, \$1.25.

Niagara River. Joint Resolution authorizing Secretary of War to issue permits for diversion of water from. Approved June 29, 1918. 1 p. (Public Resolution 33.) 5c.

Panama Canal. Executive Order authorizing Governor of The Panama Canal to exercise, within territory and waters of Panama Canal, all powers mentioned in Sec. 1, Title 2, of Espionage Act, to same extent as is conferred therein on Secretary of Treasury with regard to territorial waters of United States. May 28, 1918. 1 p. (No. 2867.) *State Dept.*

———. Executive Order superseding Executive Order of May 28, 1918. July 9, 1918. 1 p. (No. 2907.) *State Dept.*

Prisoners. Manual for government of United States naval prisons; General instructions relating to prisoners. 1918. 15 p. *Judge Advocate General, Navy Dept.*

Sailors. Memorandum for Secretary in re laws and regulations affecting seamen, especially in their relations to immigration law and rules, recently passed Espionage Act, and proposed passport law. 1918. 16 p. *Immigration Bureau.*

Sedition Act. Act to amend. Approved May 16, 1918. 2 p. (Public 150.) 5c.

Shipping. Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels. Approved July 18, 1918. 4 p. (Public 202.) 5c.

Shipping Board. Act to amend Act to establish Shipping Board. Approved July 15, 1918. 4 p. (Public 198.) 5c.

Trade-marks. Hearings on bill to give effect to certain provisions of convention for protection of trade-marks and commercial names,

made and signed in Buenos Aires, Aug. 20, 1910. July 3 and 5, 1918. 29 p. *Commerce Committee.*

Trading with the enemy. Executive Order revoking power and authority vested in designated officers under Trading with the Enemy Act. April 11, 1918. 1 p. (No. 2849.) *State Dept.*

———. Extracts from Trading with the Enemy Act and Executive Order of Oct. 12, 1917, and instructions, rules, and forms concerning patents, trade-marks, prints, labels, designs, and copyrights, issued under Sec. 10 of Trading with the Enemy Act. 1918. 22 p. *Federal Trade Commission.*

Travelers. Act to prevent in time of war departure from or entry into United States contrary to public safety. Approved May 22, 1918. 2 p. (Public 154.) 5c.

GEORGE A. FINCH.

JUDICIAL DECISIONS INVOLVING QUESTIONS OF
INTERNATIONAL LAW

WATTS & COMPANY, LIMITED, V. UNIONE AUSTRIACA DI NAVIGAZIONE, ETC.

Supreme Court of the United States.

October 14, 1918.

1. A suit may be brought in our courts against an alien enemy.
2. A party sued although an alien enemy is entitled to defend before the entry of judgment.
3. During a state of war, while communication is interrupted and intercourse with the enemy prohibited, it is impossible for an alien enemy to make proper defense.
4. In such a case no action should be taken except as may be required to preserve the security and the rights of the parties in *statu quo*, until by reason of the restoration of peace it may become possible for a respondent adequately to present his defense.

Mr. Justice Brandeis delivered the opinion of the Court.

On August 4, 1914, Great Britain declared war against Germany and on August 12, 1914, against Austria-Hungary. Prior to August 4, Watts, Watts & Co., Limited, a British corporation, had supplied to Unione Austriaca di Navigazione, an Austro-Hungarian corporation, bunker coal at Algiers, a dependency of the French Republic. Drafts on London given therefor having been protested for non-payment, the seller brought, on August 24, 1914, a libel *in personam* against the purchaser in the District Court of the United States for the Eastern District of New York. Jurisdiction was obtained by attaching one of the steamers to which the coal had been furnished. The attachment was discharged by giving a bond which is now in force. The respondent appeared and filed an answer which admitted that the case was within the admiralty jurisdiction of the court; and it was submitted for decision upon a stipulation as to facts and proof of foreign law.

The respondent contended that the District Court, as a court of a neutral nation, should not exercise its jurisdictional power between alien belligerents to require the transfer, by process of

judgment and execution, of funds by one alien belligerent to another; an act which it alleged was prohibited alike by the municipal law of both belligerents. The libellant replied that performance of the contract by respondent, that is, the payment of a debt due, was legal by the law of the place of performance, whether that place be taken to be Algiers or London; that it was immaterial whether it was legal by the Austro-Hungarian law, since Austria-Hungary was not the place of performance; and that the enforcement of legal rights here would not infringe the attitude of impartiality which underlies neutrality. The District Court held that it had jurisdiction of the controversy, and that it was within its discretion to determine whether it should exercise the jurisdiction; since both parties were aliens and the cause of action arose and was to be performed abroad. It then dismissed the libel without prejudice, saying: "From the standpoint of this neutral jurisdiction the controlling consideration is that the law of both belligerent countries [Great Britain and Austria-Hungary] forbids a payment by one belligerent subject to his enemy during the continuance of war. This court, in the exercise of jurisdiction founded on comity, may not ignore that state of war and disregard the consequences resulting from it." (224 Fed. 188, 194.)

The dismissal by the District Court was entered on May 27, 1915. On December 14, 1915, the decree was affirmed by the Circuit Court of Appeals, on the ground that it was within the discretion of the trial court to determine whether to take or to decline jurisdiction, *The Belgenland*, 114 U. S. 355; and that the exercise of this discretion should not be interfered with, since no abuse was shown (229 Fed. 136). On June 12, 1916, an application for leave to file a petition for writ of mandamus to compel the Court of Appeals to review the exercise of discretion by the District Court was denied (241 U. S. 655), and a writ of certiorari was granted by this court (241 U. S. 667). The certiorari and return were filed July 21, 1916. On December 7, 1917, the President issued a proclamation declaring that a state of war exists between the United States and Austria-Hungary. The case was argued here on April 17, 1918.

This court, in the exercise of its appellate jurisdiction, has power not only to correct error in the judgment entered below, but to make such disposition of the case as justice may at this time require. *Butler v. Eaton*, 141 U. S. 240; *Gulf, Colorado & Santa Fe Ry. Co.*

v. Dennis, 224 U. S. 503, 506. And in determining what justice now requires the court must consider the changes in fact and in law which have supervened since the decree was entered below. *United States v. Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft*, 239 U. S. 466, 475, 478; *Berry v. Davis*, 242 U. S. 468; *Jones v. Montague*, 194 U. S. 147; *Dinsmore v. Southern Express Co.*, 183 U. S. 115, 120; *Mills v. Green*, 159 U. S. 651; *The Schooner Rachel v. United States*, 6 Cranch 329; *United States v. Schooner Peggy*, 1 Cranch 103, 109-110. In the case at bar the rule is the more insistent, because in admiralty, cases are tried *de novo* on appeal. *Yeaton v. United States*, 5 Cranch 281; *Irvine v. The Hesper*, 122 U. S. 256, 266; *Reid v. American Express Co.*, 241 U. S. 544.

Since the certiorari was granted, the relation of the parties to the court has changed radically. Then, as earlier, the proceeding was one between alien belligerents in a court of a neutral nation. Now, it is a suit by one belligerent in a court of a co-belligerent against a common enemy. A suit may be brought in our courts against an alien enemy. *McVeigh v. United States*, 11 Wall. 259, 267. See also *Dorsey v. Kyle*, 30 Md. 512. If the libel had been filed under existing circumstances, security for the claim being obtained by attachment, probably no American court would, in the exercise of discretion, dismiss it and thus deprive the libellant not only of its security, but perhaps of all possibility of ever obtaining satisfaction. Under existing circumstances dismissal of the libel is not consistent with the demands of justice.

The respondent, although an alien enemy, is, of course, entitled to defend before a judgment should be entered. *McVeigh v. United States*, *supra*. See also *Windsor v. McVeigh*, 93 U. S. 274, 280; *Hovey v. Elliott*, 167 U. S. 409. It is now represented by counsel. But intercourse is prohibited by law between subjects of Austria-Hungary outside the United States and persons in the United States. Trading with the Enemy Act of October 6, 1917, sec. 3 (c), Public—No. 91—65th Congress. And we take notice of the fact that free intercourse between residents of the two countries has been also physically impossible. It is true that, more than three years ago, a stipulation as to the facts and the proof of foreign law was entered into by the then counsel for respondent, who has died since. But reasons may conceivably exist why that stipulation ought to be discharged or modified, or why it should be supplemented by evidence.

We cannot say that, for the proper conduct of the defense, consultation between client and counsel and intercourse between their respective countries may not be essential even at this stage. The war precludes this.

Under these circumstances, we are of opinion that the decree dismissing the libel should be set aside and the case remanded to the District Court for further proceedings, but that no action should be taken there (except such, if any, as may be required to preserve the security and the rights of the parties in *statu quo*) until, by reason of the restoration of peace between the United States and Austria-Hungary, or otherwise, it may become possible for the respondent to present its defense adequately. Compare *The Kaiser Wilhelm II*, 246 Fed. 786. *Robinson & Co. v. Continental Insurance Company of Mannheim*, [1915] 1 K. B. 155, 161-162.

Reversed.

THE LUSITANIA

251 Fed. Rep. 715.

United States District Court, Southern District of New York.—In the matter of the petition of the Cunard Steamship Company, Ltd., as owner of the steamship LUSITANIA, for limitation of its liability. MAYER, District Judge: On May 1, 1915, the British passenger carrying merchantman *Lusitania* sailed from New York, bound for Liverpool, with 1,257 passengers and a crew of 702, making a total of 1,959 souls on board, men, women, and children. At approximately 2:10 on the afternoon of May 7, 1915, weather clear and sea smooth, without warning, the vessel was torpedoed and went down by the head in about eighteen minutes, with an ultimate tragic loss of life of 1,195.

Numerous suits having been begun against The Cunard Steamship Company, Limited, the owner of the vessel, this proceeding was brought in familiar form, by the steamship company, as petitioner, to obtain an adjudication as to liability, and to limit petitioner's liability to its interest in the vessel and her pending freight, should the court find any liability.

The sinking of the *Lusitania* was inquired into before the Wreck Commissioner's Court in London, June 15, 1915, to July 1, 1915, and

the testimony then adduced, together with certain depositions taken pursuant to commissions issued out of this court and the testimony of a considerable number of passengers, crew, and experts heard before this court, constitute the record of the cause. It is fortunate, for many reasons, that such a comprehensive judicial investigation has been had; for, in addition to a mass of facts which give opportunity for a clear understanding of the case in its various aspects, the evidence presented has disposed, without question and for all time, of any false claims brought forward to justify this inexpressibly cowardly attack upon an unarmed passenger liner.

So far as equipment went, the vessel was seaworthy in the highest sense. Her carrying capacity was 2,198 passengers and a crew of about 850, or about 3,000 persons in all. She had 22 open lifeboats, capable of accommodating 1,322 persons, 26 collapsible boats, with a capacity for 1,283, making a total of 48 boats, with a capacity for 2,605 in all, or substantially in excess of the requirements of her last voyage. Her total of life belts was 3,187, or 1,959 more than the total number of passengers, and, in addition, she carried 20 life buoys. She was classed 100 A1 at Lloyd's, being 787 feet long over all, with a tonnage of 30,395 gross and 12,611 net. She had 4 turbine engines, 25 boilers, 4 boiler rooms, 12 transverse bulkheads, dividing her into 13 compartments, with a longitudinal bulkhead on either side of the ship for 425 feet, covering all vital parts.

The proof is absolute that she was not and never had been armed, nor did she carry any explosives. She did carry some eighteen fuse cases and 125 shrapnel cases, consisting merely of empty shells, without any powder charge, 4,200 cases of safety cartridges, and 189 cases of infantry equipment, such as leather fittings, pouches, and the like. All these were for delivery abroad, but none of these munitions could be exploded by setting them on fire in mass or in bulk, nor by subjecting them to impact. She had been duly inspected on March 17, April 15, 16, and 17, all in 1915, and before she left New York the boat gear and boats were examined, overhauled, checked up, and defective articles properly replaced.

There is no reason to doubt that this part of her equipment was in excellent order when she left New York. The vessel was under the command of a long service and experienced captain, and officered by competent and experienced men. The difficulties of the war prevented the company from gathering together a crew fully reaching

a standard as high as in normal times (many of the younger British sailors having been called to the colors); but, all told, the crew was good, and, in many instances, highly intelligent and capable. Due precaution was taken in respect of boat drills while in port, and the testimony shows that those drills were both sufficient and efficient. Some passengers did not see any boat drills on the voyage, while others characterized the drills, in effect, as formally superficial. Any one familiar with ocean traveling knows that it is not strange that boat drills may take place unobserved by some of the passengers, who, though on deck, may be otherwise occupied, or who may be in another part of the ship, and such negative testimony must give way to the positive testimony that there were daily boat drills, the object of which mainly was to enable the men competently and quickly to lower the boats.

Each man had a badge showing the number of the boat to which he was assigned, and a boat list was posted in three different places in the ship. Each day of the voyage a drill was held with the emergency boat, which was a fixed boat, either No. 13 on the starboard side or No. 14 on the port side, according to the weather; the idea, doubtless, being to accustom the men quickly to reach the station on either side of the ship. The siren was blown and a picked crew from the watch assembled at the boat, put on life belts, jumped into the boat, took their places, and jumped out again.

Throughout this case it must always be remembered that the disaster occurred in May, 1915, and the whole subject must be approached with the knowledge and mental attitude of that time. It may be that more elaborate and effective methods and precautions have been adopted since then, but there is no testimony which shows that these boat drills, as practiced on the voyage, were not fully up to the then existing standards and practices. There can be no criticism of the bulkhead door drills, for there was one each day.

In November, 1914, the Directors of the Cunard Company, in view of the falling off of the passenger traffic, decided to withdraw the *Lusitania's* sister ship, *Mauretania*, and to run the *Lusitania* at three-fourths boiler power, which involved a reduction of speed from an average of about twenty-four knots to an average of about twenty-one knots. The ship was operated under this reduced boiler power and reduced rate of speed for six round trips, until and including the fatal voyage, although at the reduced rate she was con-

siderably faster than any passenger ship crossing the Atlantic at that time. This reduction was in part for financial reasons and in part "a question of economy of coal and labor in time of war." No profit was expected and none was made; but the company continued to operate the ship as a public service. The reduction from twenty-four to twenty-one knots is, however, quite immaterial to the controversy, as will later appear.

Having thus outlined the personnel, equipment, and cargo of the vessel, reference will now be made to a series of events preceding her sailing on May 1, 1915.

On February 4, 1915, the Imperial German Government issued a proclamation as follows:

PROCLAMATION.

1. The waters surrounding Great Britain and Ireland, including the whole English Channel, are hereby declared to be war zone. On and after the 18th of February, 1915, every enemy merchant ship found in the said war zone will be destroyed without its being always possible to avert the dangers threatening the crews and passengers on that account.

2. Even neutral ships are exposed to danger in the war zone, as in view of the misuse of neutral flags ordered on January 31 by the British Government, and of the accidents of naval war, it cannot always be avoided to strike even neutral ships in attacks that are directed at enemy ships.

3. Northward navigation around the Shetland Islands, in the eastern waters of the North Sea, and in a strip of not less than thirty miles width along the Netherlands coast is in no danger.

VON POHL,

Chief of the Admiral Staff of the Navy.

Berlin, February 4, 1915.

This was accompanied by a so-called memorial, setting forth the reasons advanced by the German Government in support of the issuance of this proclamation, an extract from which is as follows:

Just as England declared the whole North Sea between Scotland and Norway to be comprised within the seat of war, so does Germany now declare the waters surrounding Great Britain and Ireland, including the whole English Channel, to be comprised within the seat of war, and will prevent by all the military means at its disposal all navigation by the enemy in those waters. To this end it will endeavor to destroy, after February 18 next, any merchant vessels of the enemy which present themselves at the seat of war above indicated, although it may not always be possible to avert the dangers which may menace persons and merchandise. Neutral powers are accordingly forewarned not to continue to intrust their crews, passengers or merchandise to such vessels.

To this proclamation and memorial the Government of the United States made due protest under date of February 10, 1915. On the same day protest was made to England by this Government regarding the use of the American flag by the *Lusitania* on its voyage through the war zone on its trip from New York to Liverpool of January 30, 1915, in response to which, on February 19, Sir Edward Grey, Secretary of State for Foreign Affairs, handed a memorandum to Mr. Page, the American Ambassador to England, containing the following statement:

It was understood that the German Government had announced their intention of sinking British merchant vessels at sight by torpedoes, without giving any opportunity of making any provisions for saving the lives of noncombatant crews and passengers. It was in consequence of this threat that the *Lusitania* raised the United States flag on her inward voyage and on her subsequent outward voyage. A request was made by the United States passengers who were embarking on board her that the United States flag should be hoisted, presumably to insure their safety.

The British Ambassador, Hon. Cecil Spring-Rice, on March 1, 1915, in a communication to the American Secretary of State, regarding an economic blockade of Germany, stated in reference to the German proclamation of February 4:

Germany has declared that the English Channel, the north and west coasts of France, and the waters around the British Isles are a war area, and has officially notified that all enemy ships found in that area will be destroyed and that neutral vessels may be exposed to danger. This is in effect a claim to torpedo at sight, without regard to the safety of the crew or passengers, any merchant vessel under any flag. As it is not in the power of the German Admiralty to maintain any surface craft in these waters, this attack can only be delivered by submarine agency.

Beginning with the 30th of January, 1915, and prior to the sinking of the *Lusitania* on May 7, 1915, German submarines attacked and seemed to have sunk twenty merchant and passenger ships within about 100 miles of the usual course of the *Lusitania*, chased two other vessels, which escaped, and damaged still another.

It will be noted that nothing is stated in the German memorandum, *supra*, as to sinking enemy merchant vessels without warning, but, on the contrary, the implication is that settled international law as to visit and search, and an opportunity for the lives of passengers to be safeguarded will be obeyed "although it may not always be

possible to avert the dangers which may menace persons and merchandise."

As a result of this submarine activity, the *Lusitania*, on its voyages from New York to Liverpool, beginning with that of January 30, 1915, steered a course farther off from the south coast of Ireland than formerly. In addition, after the German proclamation of February 4, 1915, the *Lusitania* had its boats swung out and provisioned while passing through the danger zone, did not use its wireless for sending messages, and did not stop at the Mersey Bar for a pilot, but came directly up to its berth.

The petitioner and the master of the *Lusitania* received certain advices from the British Admiralty on February 10, 1915, as follows:

INSTRUCTIONS WITH REFERENCE TO SUBMARINES, 10TH FEBRUARY, 1915.

Vessels navigating in submarine areas should have their boats turned out and fully provisioned. The danger is greatest in the vicinity of ports and off prominent headlands on the coast. Important landfalls in this area should be made after dark whenever possible. So far as is consistent with particular trades and state of tides, vessels should make their ports at dawn.

On April 15 and 16, 1915, and after the last voyage from New York, preceding the one on which the *Lusitania* was torpedoed, the Cunard Company and the master of the *Lusitania* received at Liverpool the following advices from the British Admiralty:

CONFIDENTIAL DAILY VOYAGE NOTICE 15TH APRIL, 1915, ISSUED UNDER GOVERNMENT WAR RISKS SCHEME.

German submarines appear to be operating chiefly off prominent headlands and landfalls. Ships should give prominent headlands a wide berth.

CONFIDENTIAL MEMO. ISSUED APRIL 16, 1915:

War experience has shown that fast steamers can considerably reduce the chance of successful surprise submarine attack by zigzagging—that is to say, altering the course at short and irregular intervals, say in ten minutes to half an hour. This course is almost invariably adopted by warships, when cruising in an area known to be infested by submarines. The underwater speed of a submarine is very slow and it is exceedingly difficult for her to get into position to deliver an attack, unless she can observe and predict the course of the ship attacked.

Sir Alfred Booth, Chairman of the Cunard Line, was a member of the War Risks Committee at Liverpool, consisting of ship owners,

representatives of the Board of Trade and the Admiralty, which received these instructions, and passed them on to the owners of vessels, including the Cunard Company, who distributed them to the individual masters.

On Saturday, May 1, 1915, the advertised sailing date of the *Lusitania* from New York to Liverpool on the voyage on which she was subsequently sunk, there appeared the following advertisement in *The New York Times*, *New York Tribune*, *New York Sun*, *New York Herald*, and *The New York World*; this advertisement being, in all instances except one placed directly over, under, or adjacent to the advertisement of the Cunard Line regarding the sailing of the *Lusitania*:

Travelers intending to embark on the Atlantic voyage are reminded that a state of war exists between Germany and her allies and Great Britain and her allies; that the zone of war includes the waters adjacent to the British Isles; that, in accordance with formal notice given by the Imperial German Government, vessels flying the flag of Great Britain, or of any of her allies, are liable to destruction in those waters and that travelers sailing in the war zone on ships of Great Britain or her allies do so at their own risk.

IMPERIAL GERMAN EMBASSY,

April 22, 1915.

Washington, D. C.

This was the first insertion of this advertisement, although it was dated more than a week prior to its publication. Capt. Turner, the master of the vessel, saw the advertisement or "something of the kind" before sailing and realized that the *Lusitania* was included in the warning. The Liverpool office of the Cunard Company was advised of the sailing and the number of passengers by cable from the New York office, but no mention was made of the above quoted advertisement. Sir Alfred Booth was informed through the press of this advertisement on either Saturday evening, May 1, or Sunday morning, May 2.

The significance and construction to be given to this advertisement will be discussed *infra*, but it is perfectly plain that the master was fully justified in sailing on the appointed day from a neutral port with many neutral and noncombatant passengers, unless he and his company were willing to yield to the attempt of the German Government to terrify British shipping. No one familiar with the British character would expect that such a threat would accomplish more than to emphasize the necessity of taking every precaution to

protect life and property, which the exercise of judgment would invite. And so, as scheduled, the *Lusitania* sailed, undisguised, with her four funnels and a figure so familiar as to be readily discernible, not only by naval officers and mariners, but by the ocean-going public generally.

The voyage was uneventful until May 6. On approaching the Irish coast, on May 6, the captain ordered all the boats hanging on the davits to be swung out and lowered to the promenade deckrail, and this order was carried out under the supervision of Staff Captain Anderson, who later went down with the ship. All bulkhead doors which were not necessary for the working of the ship were closed, and it was reported to Capt. Turner that this had been done. Lookouts were doubled, and two extra were put forward and one on either side of the bridge; that is, there were two lookouts in the crow's nest, two in the eyes of the ship, two officers on the bridge, and a quartermaster on either side of the bridge.

Directions were given to the engine room to keep the highest steam they could possibly get on the boilers, and in case the bridge rang for full speed to give as much as they possibly could. Orders were also given that ports should be kept closed. At 7:50 p. m. on May 6 the *Lusitania* received the following wireless message from the Admiralty at Queenstown: "Submarines active off south coast of Ireland."

And at 7:56 the vessel asked for and received a repetition of this message. The ship was then going at a rate of 21 knots per hour. At 8:30 p. m. of the same day the following message was received from the British Admiralty:

To All British Ships 0005:

Take Liverpool pilot at bar and avoid headlands. Pass harbors at full speed; steer mid-channel course. Submarines off Fastnet.

At 8:32 the Admiralty received a communication to show that this message had been received by the *Lusitania*, and the same message was offered to the vessel seven times between midnight of May 6 and 10 a. m. of May 7. At about 8 a. m. on the morning of May 7, on approaching the Irish coast, the vessel encountered an intermittent fog or Scotch mist, called "banks" in seafaring language, and the speed was reduced to fifteen knots. Previously, the speed, according to Capt. Turner's recollection, had been reduced to

eighteen knots. This adjustment of speed was due to the fact that Capt. Turner wished to run the last 150 miles of the voyage in the dark, so as to make Liverpool early on the morning of May 8, at the earliest time when he could cross the bar without a pilot.

Judging from the location of previous submarine attacks, the most dangerous waters in the *Lusitania's* course were from the entrance to St. George's Channel to Liverpool Bar. There is no dispute as to the proposition that a vessel darkened is much safer from submarine attack at night than in the daytime, and Capt. Turner exercised proper and good judgment in planning accordingly as he approached dangerous waters. It is futile to conjecture as to what would or would not have happened had the speed been higher prior to the approach to the Irish coast, because, obviously, until then, the captain could not figure out his situation, not knowing how he might be impeded by fog or other unfavorable weather conditions.

On the morning of May 7, 1915, the ship passed about 25 or 26, and, in any event, at least $18\frac{1}{2}$ miles south of Fastnet, which was not in sight. The course was then held up slightly to bring the ship closer to land, and a little before noon land was sighted, and what was thought to be Brow Head was made out. Meanwhile, between 11 a. m. and noon, the fog disappeared, the weather became clear, and the speed was increased to eighteen knots. The course of the vessel was S. 87° E. mag. At 11:25 a. m. Capt. Turner received the following message:

Submarines active in southern part of Irish Channel last heard of twenty miles south of Coningbeg Light vessel make certain Lusitania gets this.

At 12:40 p. m. the following additional wireless message from the Admiralty was received:

Submarines five miles south of Cape Clear proceeding west when sighted at 10 a. m.

After picking up Brow Head, and at about 12:40 p. m., the course was altered in shore by about 30 degrees to about N. 63° or 67° E. mag., Capt. Turner did not recall which. Land was sighted which the captain thought was Galley Head, but he was not sure, and therefore held in shore. This last course was continued for an hour at a speed of 18 knots until 1:40 p. m., when the Old Head of Kinsale was sighted, and the course was then changed back to

the original course of S. 87° E. mag. At 1:50 p. m. the captain started to take a four point bearing on the Old Head of Kinsale, and while thus engaged, and at about 2:10 p. m., as heretofore stated, the ship was torpedoed on the starboard side. Whether one, two, or three torpedoes were fired at the vessel cannot be determined with certainty. Two of the ship's crew were confident that a third torpedo was fired and missed the ship. While not doubting the good faith of these witnesses, the evidence is not sufficiently satisfactory to be convincing.

There was, however, an interesting and remarkable conflict of testimony as to whether the ship was struck by one or two torpedoes, and witnesses, both passengers and crew, differed on this point, conscientiously and emphatically, some witnesses for claimants and some for petitioner holding one view, and others, called by each side, holding the opposite view. The witnesses were all highly intelligent, and there is no doubt that all testified to the best of their recollection, knowledge, or impression, and in accordance with their honest conviction. The weight of the testimony (too voluminous to analyze) is in favor of the "two torpedo" contention, not only because of some convincing direct testimony (as, for instance, Adams, Lehman, Morton), but also because of the unquestioned surrounding circumstances. The deliberate character of the attack upon a vessel whose identity could not be mistaken, made easy on a bright day, and the fact that the vessel had no means of defending herself, would lead to the inference that the submarine commander would make sure of her destruction. Further, the evidence is overwhelming that there was a second explosion. The witnesses differ as to the impression which the sound of this explosion made upon them—a natural difference, due to the fact, known by common experience, that persons who hear the same explosion, even at the same time, will not only describe the sound differently, but will not agree as to the number of detonations. As there were no explosives on board, it is difficult to account for the second explosion, except on the theory that it was caused by a second torpedo. Whether the number of torpedoes was one or two is relevant, in this case, only upon the question of what effect, if any, open ports had in accelerating the sinking of the ship.

While there was much testimony and some variance as to the places where the torpedoes struck, judged by the sound or shock of the explosions, certain physical effects, especially as to smoke and

blown-up débris, tend to locate the areas of impact with some approach to accuracy.

From all the testimony it may be reasonably concluded that one torpedo struck on the starboard side, somewhere abreast of No. 2 boiler room, and the other, on the same side, either abreast of No. 3 boiler room, or between No. 3 and No. 4. From knowledge of the torpedoes then used by the German submarines, it is thought that they would effect a rupture of the outer hull thirty to forty feet long and ten to fifteen feet vertically.

Cockburn, senior second engineer, was of opinion that the explosion had done a great deal of internal damage. Although the lights were out, Cockburn could hear the water coming into the engine room. Water at once entered No. 1 and No. 2 boiler rooms, a result necessarily attributable to the fact that one or both of the coal bunkers were also blown open. Thus, one torpedo flooded some or all the coal bunkers on the starboard side of Nos. 1 and 2 boiler rooms and apparently flooded both boiler rooms.

The effect of the other torpedo is not entirely clear. If it struck midway between two bulkheads, it is quite likely to have done serious bulkhead injury. The *Lusitania* was built so as to float with two compartments open to the sea, and with more compartments open she could not stay afloat. As the side coal bunkers are regarded as compartments, the ship could not float with two boiler rooms flooded and also any adjacent bunker, and therefore the damage done by one torpedo was enough to sink the ship. To add to the difficulties, all the steam had gone as the result of the explosions, and the ship could not be controlled by her engines.

Little, senior third engineer, testified that in a few seconds after the explosion the steam pressure fell from 190 to 50 pounds; his explanation being that the main steam pipes or boilers had been carried away. The loss of control of and by the engines resulted in disability to stop the engines, with the result that the ship kept her headway until she sank. That the ship commenced to list to starboard immediately is abundantly established by many witnesses.

Some of the witnesses (Lauriat and Adams, passengers; Duncan, Bestie, and Johnson, officers) testified that the ship stopped listing to starboard and started to recover, and then listed again to starboard until she went over. This action, which is quite likely, must have resulted from the inrush of water on the port side.

There can be no other adequate explanation consistent with elementary scientific knowledge; for, if the ship temporarily righted herself, it must have been because the weight of water on the two sides was equal, or nearly so. The entry of water into the port side must, of course, have been due to some rupture on that side. Such a result was entirely possible, and, indeed, probable.

The explosive force was sufficiently powerful to blow debris far above the radio wires—*i.e.*, more than 160 feet above the water. The boiler rooms were not over sixty feet wide, and so strong a force could readily have weakened the longitudinal bulkheads on the port side, in addition to such injury as flying metal may have done. It is easy to understand, therefore, how the whole pressure of the water rushing in from the starboard side against the weakened longitudinal bulkheads on the port side would cause them to give way, and thus open up some apertures on the port side for the entry of water. Later, when the water continued to rush in on the starboard side, the list to starboard naturally again occurred, increased, and continued to the end. As might be expected, the degree of list to starboard is variously described, but there is no doubt that it was steep and substantial.

A considerable amount of testimony was taken upon the contention of claimants that many of the ship's ports were open, thus reducing her buoyancy and substantially hastening her sinking. There is no doubt that on May 6 adequate orders were given to close all ports. The testimony is conclusive that the ports on Deck F (the majority of which were dummy ports) were closed. Very few, if any, ports on E deck were open, and, if so, they were starboard ports in a small section of the first class, in the vicinity where one of the torpedoes did its damage. A very limited number of passengers testified that the portholes in their staterooms were open, and, if their impressions are correct, these portholes, concerning which they testified, were all, or nearly all, so far above the water that they could not have influenced the situation.

There was conflicting testimony as to the ports in the dining room on D deck. The weight of the testimony justifies the conclusion that some of these ports were open,—how many it is impossible to determine. These ports, however, were from twenty-three to thirty feet above water, and when the gap made by the explosion and the consequent severe and sudden list are considered, it is plain that these

open ports were not a contributing cause of the sinking and had a very trifling influence, if any, in accelerating the time within which the ship sank.

From the foregoing, the situation can be visualized. Two sudden and extraordinary explosions; the ship badly listed, so that the port side was well up in the air; the passengers scattered about on the decks and in the staterooms, saloons, and companionways; the ship under headway, and, as it turned out, only eighteen minutes afloat—such was the situation which confronted the officers, crew, and passengers in the endeavor to save the lives of those on board. The conduct of the passengers constitutes an enduring record of calm heroism, with many individual instances of sacrifice, and, in general, a marked consideration for women and children. There was no panic; but, naturally, there was a considerable amount of excitement and rush, and much confusion, and, as the increasing list rendered ineffective the lowering of the boats on the port side, the passengers, as is readily understandable, crowded over on the starboard side.

(1) The problem presented to the officers of the ship was one of exceeding difficulty, occasioned largely because of the serious list and the impossibility of stopping the ship or reducing her headway.

The precaution of extra lookouts resulted in a prompt report to the captain, via the bridge, of the sighting of the torpedo. Second Officer Heppert, who was on the bridge, immediately closed all watertight doors worked from the bridge, and the testimony satisfactorily shows that all watertight doors worked by hand were promptly closed. Immediately after Capt. Turner saw the wake of the torpedo, there was an explosion, and then Turner went to the navigation bridge and took the obvious course, *i.e.*, had the ship's head turned to the land. He signaled the engine room for full speed astern, hoping, thereby, to take the way off the ship, and then ordered the boats lowered down to the rail, and directed that women and children should be first provided for in the boats. As the engine room failed to respond to the order to go full speed astern, and as the ship was continuing under way, Turner ordered that the boats should not be lowered until the vessel should lose her headway, and he told Anderson, the staff captain, who was in charge of the port boats, to lower the boats when he thought the way was sufficiently off to allow that operation. Anderson's fidelity to duty is sufficiently exemplified by the fact that he went down with the ship.

Jones, First Officer, and Lewis, Acting Third Officer, were in charge of the boats on the starboard side, and personally superintended their handling and launching. Too much cannot be said both for their courage and skill; but, difficult as was their task, they were not confronted with some of the problems which the port side presented. There, in addition to Anderson, were Bestie, Junior Third Officer, and another officer, presumably the second officer. These men were apparently doing the best they could and standing valiantly to their duty. Anderson's fate has already been mentioned, and Bestie, although surviving, stuck to his post until the ship went down under him. The situation can readily be pictured, even by a novice.

With the ship listed to starboard, the port boats, of course, swung inboard. If enough man power were applied, the boats could be put over the rail; but then a real danger would follow. Robertson, the ship's carpenter, aptly described that danger in answer to a question as to whether it was possible to lower the open boats on the port side. He said:

No; to lower the port boats would just be like drawing a crate of unpacked china along a dock road. What I mean is that if you started to lower the boats, you would be dragging them down the rough side of the ship on rivets which are what we call "snap-headed rivets"; they stand up about an inch from the shell of the ship, so you would be dragging the whole side of the boat away if you tried to lower the boats with a 15° list.

That some boats were and others would have been seriously damaged is evidenced by the fact that two port boats were lowered to the water and got away (though one afterward filled), and not one boat reached Queenstown. Each boat has its own history (except possibly boats 2 and 4), although it is naturally difficult, in each case, to allocate all the testimony to a particular boat.

There is some testimony, given in undoubted good faith, that painted or rusted davits stuck out; but the weight of the testimony is to the contrary. There were some lamentable occurrences on the port side, which resulted in spilling passengers, some of whom, thus thrown out or injured, went to their death. These unfortunate accidents, however, were due either to lack of strength of the seaman who was lowering, or possibly, at worst, to an occasional instance of incompetency, due to the personal equation so often illustrated where one man of many may not be equal to the emergency. But the prob-

lem was of the most vexatious character. In addition to the crowding of passengers in some instances, was this extremely hazardous feat of lowering boats swung inboard from a tilted height, heavily weighted by human beings, with the ship still under way. It cannot be said that it was negligent to attempt this, because, obviously, all the passengers could not be accommodated in the starboard boats.

On the starboard side, the problem in some respects was not so difficult, while in others troublesome conditions existed, quite different from those occurring on the port side. Here the boats swung so far out as to add to the difficulty of passengers getting in them, a difficulty intensified by the fact that many more passengers went to the starboard side than to the port side, and also that the ship maintained her way. Six boats successfully got away. In the case of the remaining boats, some were successfully lowered, but later met with some unavoidable accident, and some were not successfully launched (such as Nos. 1, 5, and 17) for entirely explainable reasons, which should not be charged to inefficiency on the part of the officers or crew.

The collapsible boats were on the deck under the open lifeboats, and were intended to be lifted and lowered by the same davits which lowered the open boats after the open boats had gotten clear of the ship. It was the duty of the officers to get the open boats away before giving attention to the collapsible boats, and that was a question of time. These boats are designed and arranged to float free if the ship should sink before they can be hoisted over. They were cut loose, and some people were saved on these boats.

It is to be expected that those passengers who lost members of their family or friends, and who saw some of the unfortunate accidents, should feel strongly and entertain the impression that inefficiency or individual negligence was widespread among the crew. Such an impression, however, does an inadvertent injustice to the great majority of the crew, who acted with that matter-of-fact courage and fidelity to duty which are traditional with men of the sea. Such of these men, presumably fairly typical of all, as testified in this court, were impressive, not only because of inherent bravery, but because of intelligence and clear-headedness, and they possessed that remarkable gift of simplicity so characteristic of truly fearless men, who cannot quite understand why an ado is made of acts which seem to them merely as, of course, in the day's work.

Mr. Grab, one of the claimants, and an experienced transatlantic traveler, concisely summed up the situation when he said:

They were doing the best they could; they were very brave and working as hard as they could without any fear; they didn't care about themselves. It was very admirably done. While there was great confusion, they did the best they could.

It will unduly prolong a necessarily extended opinion to sift the voluminous testimony relating to this subject of the boats and the conduct of the crew, and something is sought to be made of comments of Capt. Turner, construed by some to be unfavorable, but afterward satisfactorily supplemented and explained; but, if there were some instances of incompetency, they were very few, and the charge of negligence in this regard cannot be successfully maintained.

In arriving at this conclusion, I have not overlooked the argument, earnestly pressed, that the men were not sufficiently instructed and drilled; for I think the testimony establishes the contrary, in the light of conditions in May, 1915.

(2, 3) I now come to what seems to me the only debatable question of fact in the case, *i.e.*, whether Capt. Turner was negligent in not literally following the Admiralty advices, and also in not taking a course different from that which he adopted.

The fundamental principle in navigating a merchantman, whether in times of peace or of war, is that the commanding officer must be left free to exercise his own judgment. Safe navigation denies the proposition that the judgment and sound discretion of the captain of a vessel must be confined in a mental straitjacket. Of course, when movements are under military control, orders must be strictly obeyed, come what may. No such situation, however, was presented either to petitioner or Capt. Turner. The vessel was not engaged in military service, nor under naval convoy. True, she was, as between the German and British Governments, an enemy ship as to Germany; but she was unarmed, and a carrier of not merely noncombatants, but, among others, of many citizens of the United States, then a neutral country, at peace with all the world.

In such circumstances the captain could not shield himself automatically against error behind a literal compliance with the general advices or instructions of the Admiralty; nor can it be supposed that the Admiralty, any more than the petitioner, expected him so to

do. What was required of him was that he should seriously consider, and as far as practicable, follow the Admiralty advices, and use his best judgment as events and exigencies occurred; and if a situation arose where he believed that a course should be pursued to meet emergencies which required departure from some of the Admiralty advices as to general rules of action, then it was his duty to take such course, if in accordance with his carefully formed deliberate judgment. After a disaster has occurred, it is not difficult for the expert to show how it might have been avoided, and there is always opportunity for academic discussion as to what ought or ought not to have been done; but the true approach is to endeavor, for the moment, to possess the mind of him upon whom rested the responsibility.

Let us now see what that responsibility was and how it was dealt with. The rules of naval warfare allowed the capture, and, in some circumstances, the destruction, of an enemy merchant ship; but, at the same time, it was the accepted doctrine of all civilized nations (as will be more fully considered *infra*), that, as Lord Mersey put it: "There is always an obligation first to secure the safety of the lives of those on board."

The responsibility, therefore, of Capt. Turner, in his task of bringing the ship safely to port, was to give heed, not only to general advices advanced as the outcome of experience in the then developing knowledge as to submarine warfare, but particularly to any special information which might come to him in the course of the voyage.

Realizing that, if there was a due warning, in accordance with international law, and an opportunity, within a limited time, for the passengers to leave the ship, nevertheless that the operation must be quickly done, Capt. Turner, on May 6, had taken the full precautions, such as swinging out the boats, properly provisioned, which have been heretofore described. The principal features of the Admiralty advices were (1) to give the headlands a wide berth; (2) to steer a mid-channel course; (3) to maintain as high a speed as practicable; (4) to zigzag, and (5) to make ports, if possible, at dawn, thus running the last part of the voyage at night.

The reason for the advice as to keeping off headlands was that the submarines lurked near those prominent headlands and landfalls to and from which ships were likely to go. This instruction Capt.

Turner entirely followed in respect of Fastnet, which was the first point on the Irish coast which a vessel bound from New York to Liverpool would ordinarily approach closely, and, in normal times, the passing would be very near, or even inside of, Fastnet. The *Lusitania* passed Fastnet so far out that Capt. Turner could not see it. Whether the distance was about 25 miles, as petitioner contends, or about $18\frac{1}{2}$ miles, as claimant calculates, the result is that either distance must be regarded as a wide berth in comparison with the customary navigation at that point, and, besides, nothing happened there. At 8:30 p. m. on May 6 the message had been received from the British Admiralty that submarines were off Fastnet, so that Captain Turner, in this regard, not only followed the general advice, but the specific information from the Admiralty.

At 11:25 a. m. on May 7 Capt. Turner received the wireless from the Admiralty plainly intended for the *Lusitania*, informing him that submarines (plural) were active in the southern part of the Irish Channel, and when last heard of were 20 miles south of Coningbeg Light Ship. This wireless message presented acutely to the captain the problem as to the best course to pursue, always bearing in mind his determination and the desirability of getting to the Liverpool Bar when it could be crossed, while the tide served and without a pilot. Further, as was stated by Sir Alfred Booth: "The one definite instruction we did give him with regard to that was to authorize him to come up without a pilot." The reasons for this instruction were cogent, and were concisely summed up by Sir Alfred Booth during his examination as a witness as follows:

It was one of the points that we felt it necessary to make the captain of the *Lusitania* understand the importance of. The *Lusitania* can only cross the Liverpool Bar at certain states of the tide, and we therefore warned the captain, or whoever might be captain, that we did not think it would be safe for him to arrive off the bar at such a time that he would have to wait there, because that area had been infested with submarines, and we thought, therefore, it would be wiser for him to arrange his arrival in such a way, leaving him an absolutely free hand as to how he would do it, that he could come straight up without stopping at all. The one definite instruction we did give him with regard to that was to authorize him to come up without a pilot.

The tide would be high at Liverpool Bar at 6:53 on Saturday morning, May 8. Capt. Turner planned to cross the bar as much earlier than that as he could get over without stopping, while at the

same time figuring on passing during the darkness the dangerous waters from the entrance of St. George's Channel to the Liverpool Bar.

Having thus in mind his objective, and the time approximately when he intended to reach it, the message received at 11:25 a. m. required that he should determine whether to keep off land approximately the same distance as he was when he passed Fastnet, or to work inshore and go close to Coningbeg Light Ship. He determined that the latter was the better plan, to avoid the submarines reported in midchannel ahead of him.

When Galley Head was sighted, the course was changed so as to haul closer to the land, and this course was pursued until 1:40 p. m., at which time Capt. Turner concluded that it was necessary for him to get his bearings accurately. This he decided should be done by taking a four-point bearing, during which procedure the ship was torpedoed. It is urged that he should have taken a two-point bearing or a cross bearing, which would have occupied less time; but if, under all the conditions which appealed to his judgment as a mariner, he had taken a different method of ascertaining his exact distance, and the result would have been inaccurate, or while engaged in taking a two-point bearing, the ship had been torpedoed, then somebody would have said he should have taken a four-point bearing. The point of the matter is that an experienced captain took the bearing he thought proper for his purposes, and to predicate negligence upon such a course is to assert that a captain is bound to guess the exact location of a hidden and puzzling danger.

Much emphasis has been placed upon the fact that the speed of the ship was eighteen knots at the time of the attack, instead of twenty-four, or, in any event, twenty-one, knots, and upon the further fact (for such it is) that the ship was not zigzagging as frequently as the Admiralty advised, or in the sense of that advice. Upon this branch of the case much testimony was taken (some in camera, as in the Wreck Commissioners' Court), and, for reasons of public interest, the methods of successfully evading submarines will not be discussed. If it be assumed that the Admiralty advices as of May, 1915, were sound and should have been followed, then the answer to the charge of negligence is twofold: (1) that Capt. Turner, in taking a four-point bearing off the Old Head of Kinsale, was conscientiously exercising his judgment for the welfare of the ship;

and (2) that it is impossible to determine whether by zigzagging off the Old Head of Kinsale or elsewhere, the *Lusitania* would have escaped the German submarine or submarines.

As to the first answer, I cannot better express my conclusion than in the language of Lord Mersey:

Capt. Turner was fully advised as to the means which, in the view of the Admiralty, were best calculated to avert the perils he was likely to encounter, and in considering the question whether he is to blame for the catastrophe in which his voyage ended I have to bear this circumstance in mind. It is certain that in some respects Capt. Turner did not follow the advice given to him. It may be (though I seriously doubt it) that, had he done so, his ship would have reached Liverpool in safety. But the question remains: Was his conduct the conduct of a negligent or of an incompetent man? On this question I have sought the guidance of my assessors, who have rendered me invaluable assistance, and the conclusion at which I have arrived is that blame ought not to be imputed to the captain. The advice given to him, although meant for his most serious and careful consideration, was not intended to deprive him of the right to exercise his skilled judgment in the difficult questions that might arise from time to time in the navigation of his ship. His omission to follow the advice in all respects cannot fairly be attributed either to negligence or incompetence. He exercised his judgment for the best. It was the judgment of a skilled and experienced man, and although others might have acted differently, and perhaps, more successfully, he ought not, in my opinion, to be blamed.

As to the second answer, it is only necessary to outline the situation in order to realize how speculative is the assertion of fault. It is plain from the radio messages of the Admiralty (May 6, 7:50 p. m., "Submarines active off south coast of Ireland"; May 6, 8:30 p. m., "Submarines off Fastnet"; the 11:25 message of May 7, *supra*; May 7, 11:40 a. m., "Submarines five miles south of Cape Clear, proceeding west when sighted at 10 a. m."), that more than one submarine was lying in wait for the *Lusitania*.

A scientific education is not necessary to appreciate that it is much more difficult for a submarine successfully to hit a naval vessel than an unarmed merchant ship. The destination of a naval vessel is usually not known; that of the *Lusitania* was. A submarine commander, when attacking an armed vessel, knows that he, as the attacker, may and likely will also be attacked by his armed opponent. The *Lusitania* was as helpless in that regard as a peaceful citizen suddenly set upon by murderous assailants. There are other advantages of the naval vessel over the merchant ship which need not be referred to.

It must be assumed that the German submarine commanders realized the obvious disadvantages which necessarily attached to the *Lusitania*, and, if she had evaded one submarine, who can say what might have happened five minutes later? If there was, in fact, a third torpedo fired from the *Lusitania's* port side, then that incident would strongly suggest that, in the immediate vicinity of the ship, there were at least two submarines. It must be remembered, also, that the *Lusitania* was still in the open sea, considerably distant from the places of theretofore submarine activity and comfortably well off the Old Head of Kinsale, from which point it was about 140 miles to the Scilly Islands, and that she was nearly 100 miles from the entrance to St. George's Channel, the first channel she would enter on her way to Liverpool.

No transatlantic passenger liner, and certainly none carrying American citizens, had been torpedoed up to that time. The submarines, therefore, could lay their plans with facility to destroy the vessel somewhere on the way from Fastnet to Liverpool, knowing full well the easy prey which would be afforded by an unarmed, unconvoyed, well-known merchantman, which from every standpoint of international law, had the right to expect a warning before its peaceful passengers were sent to their death. That the attack was deliberate and long contemplated, and intended ruthlessly to destroy human life, as well as property, can no longer be open to doubt. And when a foe employs such tactics it is idle and purely speculative to say that the action of the captain of a merchant ship, in doing or not doing something, or in taking one course and not another, was a contributing cause of disaster, or that, had the captain not done what he did, or had he done something else, then, that the ship and her passengers would have evaded their assassins.

I find, therefore, as a fact, that the captain and, hence, the petitioner, were not negligent. The importance of the cause, however, justifies the statement of another ground which effectually disposes of any question of liability.

(4) It is an elementary principle of law that, even if a person is negligent, recovery cannot be had, unless the negligence is the proximate cause of the loss or damage.

(5) There is another rule, settled by ample authority, *viz.*, that even if negligence is shown, it cannot be the proximate cause of the loss or damage, if an independent illegal act of a third party inter-

venes to cause the loss. *Jarnagin v. Travelers' Protective Assn.*, 133 Fed. 892, 66 C. C. A. 622, 68 L. R. A. 499; *Cole v. German Savings & Loan Soc.*, 124 Fed. 113, 59 C. C. A. 593, 63 L. R. A. 416. See, also, *Insurance Co. v. Tweed*, 7 Wall. 44, 19 L. Ed. 65; *Railroad Co. v. Reeves*, 10 Wall. 176, 19 L. Ed. 909; *Insurance Co. v. Boon*, 95 U. S. 117, 24 L. Ed. 395; *The Young America*, (C. C.) 31 Fed. 749; *Goodlander Mill Co. v. Standard Oil Co.*, 63 Fed. 400, 11 C. C. A. 253, 27 L. R. A. 583.

(6-8) Claimants contend strongly that the case at bar comes within *Holladay v. Kennard*, 12 Wall. 254, 20 L. Ed. 390, where Mr. Justice Miller, who wrote the opinion, carefully stated that that case was not to be construed as laying down a rule different from that of *Railroad Company v. Reeves*, *supra*. An elaborate analysis of the *Holladay* and other cases will not be profitable. Suffice it to say, neither that nor any other case has changed the rule of law, above stated, as to the legal import of an intervening illegal act of a third party.

The question, then, is whether the act of the German submarine commander was an illegal act.

The United States courts recognize the binding force of international law. As was said by Mr. Justice Gray in the *Paquete Habana*, 175 U. S. 677, 700, 20 Sup. Ct. 290, 299 (44 L. Ed. 320):

International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination.

At least, since as early as June 5, 1793, in the letter of Mr. Jefferson, Secretary of State, to the French Minister, our government has recognized the law of nations as an "integral part" of the laws of the land. *Moore's International Law Digest*, I, p. 10; *The Scotia*, 14 Wall. 170, 187, 20 L. Ed. 822; *The New York*, 175 U. S. 187, 197, 20 Sup. Ct. 67, 44 L. Ed. 126; *Kansas v. Colorado*, 185 U. S. 125, 146, 22 Sup. Ct. 552, 46 L. Ed. 838; *Kansas v. Colorado*, 206 U. S. 46, 27 Sup. Ct. 655, 51 L. Ed. 956.

To ascertain international law, "resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of commentators and jurists . . . Such works are resorted to by judicial tribunals . . . for trustworthy evidence of what the law

really is." *The Paquete Habana*, 175 U. S. 677, 20 Sup. Ct. 290, 44 L. Ed. 320 (and authorities cited).

Let us first see the position of our government, and then ascertain whether that position has authoritative support. Mr. Lansing, in his official communication to the German Government, dated June 9, 1915, stated:

But the sinking of passenger ships involves principles of humanity which throw into the background any special circumstances of detail that may be thought to affect the cases—principles which lift it, as the Imperial German Government will no doubt be quick to recognize and acknowledge, out of the class of ordinary subjects of diplomatic discussion or of international controversy. . . . Whatever be the other facts regarding the *Lusitania*, the principal fact is that a great steamer, primarily and chiefly a conveyance for passengers, and carrying more than a thousand souls, who had no part or lot in the conduct of the war, was torpedoed and sunk without so much as a challenge or a warning, and that men, women, and children were sent to their death in circumstances unparalleled in modern warfare. The fact that more than one hundred American citizens were among those who perished made it the duty of the Government of the United States to speak of these things, and once more, with solemn emphasis, to call the attention of the Imperial German Government to the grave responsibility which the Government of the United States conceives that it has incurred in this tragic occurrence, and to the indisputable principle upon which that responsibility rests. The Government of the United States is contending for something much greater than mere rights of property or privileges of commerce. It is contending for nothing less high and sacred than the rights of humanity, which every government honors itself in respecting, and which no government is justified in resigning on behalf of those under its care and authority. Only her actual resistance to capture, or refusal to stop when ordered to do so for the purpose of visit, could have afforded the commander of the submarine any justification for so much as putting the lives of those on board the ship in jeopardy. This principle the Government of the United States understands the explicit instructions issued on August 3, 1914, by the Imperial German Admiralty to its commanders at sea, to have recognized and embodied, as do the naval codes of all other nations, and upon it every traveler and seaman had a right to depend. It is upon this principle of humanity, as well as upon the law founded upon this principle, that the United States must stand. . . . The Government of the United States cannot admit that the proclamation of a war zone from which neutral ships have been warned to keep away may be made to operate as in any degree an abbreviation of the rights either of American shipmasters or of American citizens bound on lawful errands as passengers on merchant ships of belligerent nationality. It does not understand the Imperial German Government to question those rights. It understands it, also, to accept as established beyond question the principle that the lives of noncombatants can not lawfully or rightfully be put in jeopardy by the capture or destruction of an unresisting merchantman, and to recognize the obligation to take sufficient precaution to ascer-

tain whether a suspected merchantman is in fact of belligerent nationality, or is in fact carrying contraband of war under a neutral flag. The Government of the United States, therefore, deems it reasonable to expect that the Imperial German Government will adopt the measures necessary to put these principles into practice in respect of the safeguarding of American lives and American ships, and asks for assurances that this will be done. (White Book of Department of State, entitled "Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties, European War No. 2," at page 172. Printed and distributed October 21, 1915.)

The German Government found itself compelled ultimately to recognize the principle insisted upon by the Government of the United States, for, after considerable correspondence, and on May 4, 1916 (after the *Sussex* had been sunk), the German Government stated:

The German submarine forces have had, in fact, orders to conduct submarine warfare in accordance with the general principles of visit and search and destruction of merchant vessels as recognized by international law; the sole exception being the conduct of warfare against the enemy trade carried on enemy freight ships that are encountered in the war zone surrounding Great Britain. . . . The German Government, guided by this idea, notifies the Government of the United States that the German naval forces have received the following orders: In accordance with the general principles of visit and search and destruction of merchant vessels recognized by international law, such vessels, both within and without the area declared as naval war zone, shall not be sunk without warning and without saving human lives, unless these ships attempt to escape or offer resistance.

See Official Communication by German Foreign Office to Ambassador Gerard, May 4, 1916 (White Book No. 3 of Department of State, pp. 302, 305).

There is, of course, no doubt as to the right to make prize of an enemy ship on the high seas, and, under certain conditions, to destroy her, and equally no doubt of the obligation to safeguard the lives of all persons aboard, whether passengers or crew. Phillimore on *International Law* (3d Ed.), Vol. 3, p. 584; Sir Sherston Baker on *First Steps in International Law*, p. 236; G. B. Davis on *Elements of International Law*, pp. 358, 359; A. Pearce Higgins on *War and the Private Citizen*, pp. 33, 78, referring to proceedings of Institute of International Law at Turin in 1882; Creasy on *International Law*, p. 562, quoting Chief Justice Cockburn in his judgment in the Geneva Arbitration; L. A. Atherly-Jones on *Commerce in*

War, p. 529; Professor Holland's article, Naval War College, 1907, p. 82; Oppenheim on *International Law* (2d Ed.), Vol. 2, pp. 244, 311; Taylor on *International Law*, p. 572; Westlake on *International Law* (2d Ed.), p. 309, Part II; Halleck on *International Law*, Vol. II, pp. 15, 16; Vattel's *Law of Nations* (Chitty's Ed.), 362.

Two quotations from this long list may be given for convenience; one stating the rule and the other the attitude which obtains among civilized governments: Oppenheim sets forth as among violations of the rules of war:

(12) Attack on enemy merchantmen without previous request to submit to visit.

The observation in Vattel's *Law of Nations* is peculiarly applicable to the case of the *Lusitania*:

Let us never forget that our enemies are men. Though reduced to the disagreeable necessity of prosecuting our right by force of arms, let us not divest ourselves of that charity which connects us with all mankind. Thus shall we courageously defend our country's rights without violating those of human nature. Let our valour preserve itself from every stain of cruelty and the lustre of victory will not be tarnished by inhuman and brutal actions.

In addition to the authorities *supra* are the regulations and practices of various governments. In 1512, Henry VIII issued instructions to the Admiral of the Fleet which accord with our understanding of modern international law. Hosack's *Law of Nations*, p. 168. Such has been England's course since. 22 Geo. c. 33, § 2, Subsec. 9 (1749); British Admiralty Manual of Prize Law, 188, §§ 303, 304.

Substantially the same rules were followed in the Russian and Japanese regulations, and probably in the codes or rules of many other nations. Russian Prize Regulations, March 27, 1895 (cited in Moore's *Digest*, Vol. VII, p. 518); Japanese Prize Law of 1894, Art. 22 (cited in Moore, *supra*, Vol. VII, p. 525); Japanese Regulations, March 7, 1904 (see Takahashi's *Cases on International Law during Chino-Japanese War*).

The rules recognized and practiced by the United States, among other things, provide:

(10) In the case of an enemy merchantman it may be sunk, but only if it is impossible to take it into port, and provided always that the persons on board are put in a place of safety. (U. S. White Book, European War, No. 3, p. 192.)

These humane principles were practiced, both in the War of 1812 and during our own war of 1861-65. Even with all the bitterness (now happily ended and forgotten) and all the difficulties of having no port to which to send a prize, Captain Semmes, of the *Alabama*, strictly observed the rule as to human life, even going so far as to release ships because he could not care for the passengers. But we are not confined to American and English precedents and practices.

While acting contrary to its official statements, yet the Imperial German Government recognized the same rule as the United States, and, prior to the sinking of the *Lusitania*, had not announced any other rule. The war zone proclamation of February 4, 1915, contained no warning that the accepted rule of civilized warfare would be discarded by the German Government. Indeed, after the *Lusitania* was sunk, the German Government did not make any such claim, but, in answer to the first American note in reference to the *Lusitania*, the German Foreign Office, per Von Jagow, addressed to Ambassador Gerard a note, dated May 18, 1915, in which, *inter alia*, it is stated in connection with the sinking of the British steamer *Falaba*:

In the case of the sinking of the English steamer *Falaba*, the commander of the German submarine had the intention of allowing passengers and crew ample opportunity to save themselves. It was not until the captain disregarded the order to lay to and took to flight, sending up rocket signals for help, that the German commander ordered the crew and passengers by signals and megaphone to leave the ship within ten minutes. As a matter of fact he allowed them twenty-three minutes, and did not fire the torpedo until suspicious steamers were hurrying to the aid of the *Falaba*. (White Book No. 2, U. S. Department of State, p. 169.)

Indeed, as late as May 4, 1916, Germany did not dispute the applicability of the rule, as is evidenced by the note written to our government by Von Jagow, of the German Foreign Office, an extract from which has been quoted *supra*.

Further, Section 116 of the German Prize Code (Huberich & King translation, p. 68), in force at the date of the *Lusitania's* destruction, conformed with the American rule. It provided:

Before proceeding to a destruction of the vessel, the safety of all persons on board, and, so far as possible, their effects, is to be provided for, and all ship's papers and other evidentiary material, which, according to the views of the persons at interest, is of value for the formulation of the judgment of the prize court, are to be taken over by the commander.

Thus, when the *Lusitania* sailed from New York, her owner and master were justified in believing that, whatever else had theretofore happened, this simple, humane, and universally accepted principle would not be violated. Few, at that time, would be likely to construe the warning advertisement as calling attention to more than the perils to be expected from quick disembarkation and the possible rigors of the sea, after the proper safeguarding of the lives of passengers by at least full opportunity to take to the boats.

It is, of course, easy now, in the light of many later events, added to preceding acts, to look back and say that the Cunard Line and its captain should have known that the German Government would authorize or permit so shocking a breach of international law and so foul an offence, not only against an enemy, but as well against peaceful citizens of a then friendly nation. But the unexpected character of the act was best evidenced by the horror which it excited in the minds and hearts of the American people.

The fault, therefore, must be laid upon those who are responsible for the sinking of the vessel, in the legal as well as moral sense. It is therefore not the Cunard Line, petitioner, which must be held liable for the loss of life and property. The cause of the sinking of the *Lusitania* was the illegal act of the Imperial German Government, acting through its instrument, the submarine commander, and violating a cherished and humane rule observed, until this war, by even the bitterest antagonists. As Lord Mersey said: "The whole blame for the cruel destruction of life in this catastrophe must rest solely with those who plotted and with those who committed the crime."

But while, in this lawsuit, there may be no recovery, it is not to be doubted that the United States of America and her allies will well remember the rights of those affected by the sinking of the *Lusitania*, and, when the time shall come, will see to it that reparation shall be made for one of the most indefensible acts of modern times.

The petition is granted, and the claims dismissed, without costs.

ADDENDUM.

The grounds upon which the decision is put render unnecessary the discussion of some other interesting questions suggested. As to the exception to interrogatory 20, brushing aside all technical points,

I am satisfied that the withheld answer relates to matters irrelevant to the issues here. It certainly can not be expected, in wartime, that an American court will ask for the disclosure of information deemed confidential by the British Admiralty, nor can I see any good reason for delaying a decree until some future date, when information may be forthcoming; for it seems to me that, no matter what other general advices of the Admiralty may have been given prior to May 7, 1915, the result of this case must be the same.

BOOK REVIEWS¹

A Treatise on International Law. By William Edward Hall, M.A.
7th ed. Edited by A. Pearce Higgins, M.A., LL.D. Oxford:
University Press (American Branch, New York). 1917. \$9.60.

A new edition of a legal classic, faithfully executed by a competent hand, is always welcome. In this volume Mr. Higgins has made it his aim to preserve the form of the original work, so far as he deemed it possible. Its relative proportions remain the same. He had a task which grew upon his hands from day to day but he has not yielded to the temptation to rearrange and restate *de novo*, in the light of what had occurred since Hall's death in 1894. On the contrary, the original section numbers, which the editor of the fifth and sixth editions had changed, are restored, with occasional intercalations of new sections, dealing with new states of fact.

Hall, himself, wrote with coming changes of international practice in mind. In the preface to the third edition, prepared in 1889, he expressed the fear that Europe was moving towards a time at which the strength of international law would be severely tried. "Whole nations," he adds, "will be in the field; the commerce of the world may be on the sea to win or lose; national existence will be at stake; men will be tempted to do anything which will shorten hostilities and tend to a decisive answer. But there can be very little doubt that if the next war is unscrupulously waged, it will also be followed by a reaction towards increased stringency of law. . . . I therefore look forward with much misgiving to the manner in which the next great war will be waged, but with no misgiving at all as to the character of the rules which will be acknowledged, ten years after its termination, by comparison with the rules now considered to exist" (pp. xx, xxi).

Mr. Higgins hardly feels the same confidence. "The Central Powers," he says (p. x), "have acted on the principle that, when war breaks out, there is no international law; and should the present

¹The JOURNAL assumes no responsibility for the views expressed in signed Book Reviews.—Ed.

war terminate in an inconclusive peace, the fabric of international law will fall, and the doctrine that might is right be enthroned in its stead." That this language is overstrained is shown by his own mention of apologies during the war, promptly made by the greatest Powers for violations of international law committed by their naval commanders (p. 663).

Any work on international law which is published during a great war by a citizen of one of the belligerents, must be inevitably colored by the author's circumstances and surroundings. In treating such topics as the doctrine of angary, the creation of war zones, and the right of retaliation, Mr. Higgins writes from the standpoint of an Englishman anxious to vindicate the course of action taken by his country. He stands for interpreting the international law of today in view of today's conditions of the conduct of warfare. The right of visit and search he considers as fairly including that of taking the vessel, for the purpose, into a port of the belligerent. It seems a necessary incident of modern modes of navigation and maritime attacks (pp. 800, 809).

The creation by Great Britain, under Orders of Council, in 1915 and 1917, of war zones, Mr. Higgins justifies as an act of retaliation (p. 439), without inquiring whether it could otherwise be regarded as a legitimate incident of war. His ultimate conclusion is that the Eighth Hague Convention as to the use of submarine mines is in effect useless (p. 571).

The obligations imposed on the signatories by the Hague Conventions of 1907 have naturally engaged Mr. Higgins' special attention. After noting its discussions on the subject and those later in the Naval Conference of London, he concludes that it is still the general rule that neutral ships seized as prize can not be destroyed on account of the difficulty of taking them to a port of the captor, even if all persons on board be first placed in safety (pp. 791, 809).

Mr. Higgins recalls attention from time to time to the refusal of several of the signatory Powers to ratify certain of the Hague Conventions of 1907. From this cause, for instance, the fifth and thirteenth conventions, as to the Rights and Duties of Neutrals with respect to rules of warfare, are inapplicable to present conditions (p. 633).

He regards the rejection of the proposal made by Serbia to Austria on July 23, 1914, to refer the differences between them to the

Hague Tribunal, as a breach of treaty obligations (p. 377). This seems to ignore the fact that the Convention of 1907 for the Pacific Settlement of International Disputes had never been ratified by Serbia.

The right of submarine navigation in neutral waters is examined with the aid of full references to the memorandum of the allied Powers presented to neutral Powers August 21, 1916, and the action taken on the subject by Norway, Sweden, and Spain (pp. xl, 674).

Mr. Higgins maintains that merchant ships armed for defence should be admitted to any port where they could touch if unarmed (p. 566). Holland's position, in excluding them from her waters, except when seeking a refuge in distress, he pronounces unwarranted by law.

Hall's assertion that mails on neutral ships should be seized only under very exceptional circumstances is not accepted by Mr. Higgins as justified either by the Eleventh Hague Convention of 1907, or by the general principles of international law (pp. 742-746). He holds the use of false colors by a merchant ship to avoid capture to be a legitimate ruse of war (p. 578).

The events of the world war are regarded by Mr. Higgins as confirming Hall's position that what constitutes contraband must vary with the circumstances of particular cases (pp. 721, 724).

Hall's statement that the American use in our Civil War blockades of the doctrine of the continuous voyage would probably find now no defenders in our country is not accepted by Mr. Higgins, who cites several recent American authorities as supporting that use (p. 720). He refers to the Maritime Rights Orders in Council of 1916 as now settling the question in the same way for Great Britain (p. 782).

Mr. Higgins comes to the conclusion (p. 527) that there is no clear rule to determine when a private corporation of one nation can, in time of war, be deemed an enemy in another, and without arguing the question, contents himself with a reference to a number of recent decisions of various countries.

He denounces, in strong terms (p. 368), the breach of the Treaty of Berlin by the incorporation of Bosnia and Herzegovina into Austria-Hungary. This he terms a cynical violation of a fundamental principle of international law, and he views the failure of the other signatories of that treaty to take collective action in opposition or

protest, as impairing the value of that law as a restraining force on public conduct more than any event of recent years.

He says of the Declaration of the Hague Conference of 1907 against dropping missiles from airships, that "its authority is of the weakest" (p. 569), and seems to regard the practice, at all events, as admissible by way of reprisal.

Hall's original work was as noteworthy an addition to the English literature of international law as Woolsey's had been twenty years earlier. It belonged to the historical and practical school of thought, rather than to the speculative, but it was not lacking either in breadth or depth. Professor Holland voiced the general sentiment of his countrymen, when he said that no work upon the subject, so well proportioned, so tersely expressed, so replete with common sense, so complete, had ever appeared in England. This new edition adds new matter of permanent value. There are also frequent and helpful references to recent treatises and monographs on points of international law, such as (p. 400) Phillipson on the *Termination of War and Treaties of Peace*, Tambaro on *L'inizio della guerra*, Sir F. E. Smith on the *Destruction of Merchant Ships under International Law*, and Wehberg, on *Das Seekriegsrecht*.

Mr. Higgins had to contend, in the preparation for the press, with unfavorable circumstances, which have made the index somewhat unsatisfactory, and called for three closely printed pages of additions and corrections.

SIMEON E. BALDWIN.

A Guide to Diplomatic Practice. By the Rt. Hon. Sir Ernest Satow, G.C.M.G., LL.D., D.C.L. London: Longmans, Green and Co. 1917. 2 vols. pp. xxii, 407 and pp. ix, 405. \$9.00 net.

The present war and the era of diplomacy certain to follow it will unquestionably awake a much larger and more general interest in the art and science of diplomacy and its fundamental relation both to the successful prosecution of war and to the establishment and maintenance of peace. There is distinct need for a ready and readable manual on this phase of international comity and practice for the use of members of the foreign service of different states; for students who are preparing themselves at our various universities, notably in the University of Pennsylvania and Princeton University,

for some part in the diplomatic and consular services; and also for the general intelligent public. Especially is this the case in England and the United States, where appetite for knowledge of the ways of the diplomat has been whetted by the world catastrophe in which false diplomacy has been a conspicuous feature, and Americans and Englishmen have determined that in the future diplomacy shall lead out of blind alleys and not into them, and that something approaching democratic control of foreign affairs and frank, open and non-secret methods of conducting this business shall be substituted for the action of small coteries and the doctrines of the author of *The Prince*. While the present manual does not pretend to cover all of this ground, it is the best work, and practically the first extensive one, in English to present the actual practice and precedents obtaining in the ordinary intercourse of states as conducted by accredited representatives.

Particularly since the middle of the nineteenth century there have been appearing works by Frenchmen, Belgians, Spaniards, Germans and others, dealing specifically with this important part of the body of international law, and nearly all of the international law commentators of note have devoted considerable space to this essential subject. But Sir Ernest Satow is the first Englishman to deal in any large and satisfactory way with the topic, as our own distinguished countryman, the late Mr. John W. Foster, was the first American to plan and execute a similar but less ambitious work, *The Practice of Diplomacy as Illustrated in the Foreign Relations of the United States* (1906), which has been of considerable value and interest to the general reader and the student, especially when combined with the practical discussion and numerous cases cited in Professor John Bassett Moore's comprehensive *Digest of International Law*. Mr. Foster's primary object was to show the part played by America in the elevation and purification of diplomacy rather than to furnish a mere manual of rules of procedure, and his work stands as the pioneer in this field in the English language. Like Mr. Foster, Sir Ernest has had a long, varied and distinguished career as a diplomat and internationalist, and there is perhaps no one better fitted in England to prepare a work to illustrate to the student of these affairs the need of intelligence and tact for the successful conduct of official relations between independent states.

These two volumes are the first to appear of a series of contributions to international law and diplomacy planned by Professor Op-

penheim, of the University of Cambridge, England, to be written by well known English authorities and including disquisitions upon private international law, diplomatic history, international conventions and third states, and the laws and procedure of diplomatic practice. It is fortunate that the war, though it postponed the other volumes of the series, did not deter the author from completing and the editor from publishing this really valuable work on the last named topic by so skilful and undoubted a scholar as Sir Ernest Satow has long been known to be. A career of nearly a half-century in the consular and diplomatic services of Great Britain, from his beginning as a student interpreter and later Japanese secretary of legation amid the stirring scenes following the opening of Japan to the world, through his rise to consul-general and minister resident at the capitals of Siam and Uruguay and to envoy extraordinary and minister plenipotentiary successively in Morocco, Japan, and China, to his appointment as second delegate of Great Britain to the Second Hague Peace Conference, has given Sir Ernest a ripe experience born of contact with many races and peoples and in all grades of that branch of the public service which he here so ably discusses. A student of language and institutions and a prolific writer of scholarly articles to learned publications of the Far East, his taste and mind are admirably adapted to the research and compilation, and literary requirements, necessary to produce a comprehensive and at the same time interesting manual on diplomatic procedure. This subject appears to a public outside of the service itself and of students of international relations a rather dull and prosaic business, overcrowded with a minutia of detail and conducted by a rather worthless class of élite and polished gentlemen who cost the government a great deal but render very little service to it worth while. Had works of this kind been accessible to and perused by some of our Congressmen and newspaper editors and correspondents from the eighteen-sixties down, perhaps our State Department and our foreign service might have fared better in the financial and other support accorded it than has been the fact in our history. The immensely enlarged international duties and privileges of the United States of late years, and particularly since its government has put its whole moral and physical weight behind the upholding of established international law and right, and the expansion of its doctrines of international justice and good behavior, demand a large welcome by our reading public of all

works, such as this, in the English language, which make accessible and simple to the uninformed layman, as well as to the student, matters hitherto technical and buried in manuals in a foreign tongue beyond the ken or interest of the generality. If any part of our government machinery deserves not only due but enlarged support and expansion by Congress when we shall have come to a time of peace, it is certainly the efficient and overworked Department of State of the United States, and we believe our legislators will recognize from the services it and its agents have rendered to the entire world in this war the justice of any demand for their favor.

The first volume of the work under review treats in twenty-four chapters of the formal organization, procedure, rules of courtesy, precedence, titles, honors, et cetera, belonging to states, sovereigns and their direct representatives in international relations; to the language and forms of diplomatic intercourse, credentials and full powers; the appointment, acceptance and dismissal of diplomatic agents, their immunities and duties as regards their own state and the state to which they are accredited, and their relation to third states; the diplomatic body and its rules; the right of legation; and it also includes wholesome and sagacious counsel to diplomatists.

In the second volume, which contains nine chapters, an epilogue, three appendixes and a rather extensive index, the author considers the various kinds of international meetings, such as the more important congresses and conferences between states; and international transactions, like treaties and other compacts such as conventions, acte final, declaration, protocol, procès-verbal, exchange of notes, *réversales*, *compromis d'arbitrage*, *modus vivendi*, ratification, adhesion, accession, et cetera, and the larger diplomatic processes of good offices, mediation and arbitration. He has appended some sixteen pages of bibliography of useful works in the language of their first printing, with some intelligent discussion of the leading works in international law and diplomacy designed to be of service to junior members of the diplomatic service.

Though one hesitates to criticize in any respect so welcome and valuable an addition to the meager literature in English on this subject, the volumes are open to a very serious objection from the viewpoint of the general reader and the undergraduate student who may not have an extensive linguistic equipment. The author unfortunately offers no translation or paraphrase to somewhat extensive quo-

tations of illustrative matter not only in French, which might easily be excused in a work on diplomacy, but also in German, Spanish, Portuguese and Italian. In a work which will be chiefly used by English and American readers it would seem better, if there was any need to include a note or a document in its original language, to preserve any nice distinction of meaning, that a translation should have been given by the author, who could thus present the exact conception intended to be conveyed by the writer of the document. In the large majority of these cases, however, the discussion in English is sufficiently lucid and connected to enable the reader to minimize the loss of any matter which he may have difficulty in accurately translating for himself, but this will probably not relieve him of some sense of irritation for the needless pains he has been put to. Perhaps, also, in some places, more historical and reminiscent matter has been introduced than is strictly necessary in a technical work; but to many this feature will add to the interest of the volumes as it is often of the nature of "case" material. For any work of this scope, however, to give a "chapter" of only a brief section less than a single page to the great subject of arbitration, particularly in this modern era of the expansion of the modes of diplomacy and the growth of doctrines of conciliation and arbitral procedure dispensing with the need for diplomacy, seems inexplicable except on the grounds of a very strict and narrow concept of diplomacy and its definition. Something could have been included to show the relation of arbitration to the old conservative and technical modes of international action in strict diplomacy without at all entering upon a discussion of the details and methods of arbitral procedure in action.

Sir Ernest is by no means a pessimist, though his work has been done during a war in which Germany has made such serious but foolish attempts to destroy the whole fabric of international rights and procedure. With a faith based on experience and knowledge, he sees the expansion of international law from the local thing that it was at the time of the Thirty Years' War, and since in its limitation to the so-called "Christian" nations of Europe, to all embracing rules of international conduct for all the states of the world, the recognized "public law of the civilized universe," as he puts it. He did not foresee the part that America was to take in internationalism by the application of both its diplomatic and military force, but he realizes the beneficial influence and prominence of diplomacy in cre-

ating this system, and the enlarged importance of the function of the diplomatist, whose office at home and abroad is in American theory and practice, and as he conceives it, "to promote the welfare and happiness of other nations as well as his own, and to keep the honor of his country *ἄσπιλος καὶ ἀμόμητος*."

The make-up and the mechanical execution of the work by the publishers is all that could be desired.

JAMES CURTIS BALLAGH.

The President's Control of Foreign Relations. By Edward S. Corwin, Ph.D. Princeton: University Press. 1917. pp. vi, 216. \$1.50.

This volume is a collection of historical incidents and discussions bearing on the powers of the President in the conduct of foreign relations, about three-fourths of the text being made up of quotations. There is a brief introduction in which the author quotes the sections of the Constitution pertinent to the subject. He points out that, although these grants of power do not by any means cover the whole field, the power of the national government in the control of foreign relations is both plenary and exclusive. This plenary control is, however, shared by three branches of the government: Congress, the President and the Senate.

The body of the book is divided into three parts. Part I is devoted to the controversy on the relative powers of the President and Congress that took place early in our history between "Pacíficus" (Hamilton) and "Helvidius" (Madison). Hamilton held that the conduct of foreign relations was in its nature an executive function, and that the possession by Congress of the power to declare war, and similar powers, did not diminish the discretion of the President in the exercise of the powers constitutionally belonging to him. Madison was inclined to underrate the claims of the "executive power" and to give greater prominence to the war powers of Congress. A somewhat similar debate between Senator Bacon of Georgia and Senator Spooner of Wisconsin took place early in 1903 as the result of Roosevelt's interpretation of the treaty-making power in the negotiation of the "agreement" with the Dominican Republic, and this debate is reproduced at length in Part III.

In Part II the author discusses the general scope of "executive power," and the conflicts arising from the possession of concurrent powers by different departments of the government. While the President may make treaties "with the advice and consent of the Senate," it lies entirely within his discretion whether he will ask or accept that advice during the period of negotiation, and even after the Senate has given its advice in the form of an amendment the President is free to ratify it or not as he pleases. Again, while Congress has the constitutional power to declare war, the President takes the initiative in formulating diplomatic policies and he may commit the country to a policy which will lead inevitably to war, although no President has ever gone this far without satisfying himself that he would be sustained by public opinion.

The author holds that, in the words of Jefferson, "the transaction of business with foreign nations is executive altogether," but that Congress is not to be prejudiced constitutionally in the exercise of its powers by what the Executive has already done in the exercise of his. "Judicially enforceable constitutional limitations," he says, "do not, generally speaking, obtain in the field of the diplomatic powers of the Government. The result is that the construction of these powers has fallen principally to those who wield them, and so has not erred on the side of strictness; and furthermore, that as between the organs of government sharing these powers, that organ which possesses unity and is capable of acting with greatest expedition, secrecy and fullest knowledge—in short, with greatest efficiency—has obtained the major participation. Nor can it be reasonably doubted that these results have proved beneficial. At the same time, they counsel the maintenance in full vigor of the political check on a power so little susceptible of legal control."

On page 80 the author makes a serious slip in stating that the resolution of 1898 demanding the withdrawal of Spain from Cuba recognized the so-called Republic of Cuba. The minority report of the Senate Committee did, it is true, favor this, and their recommendation was embodied in the Senate resolution, but the House resolution merely declared "that the people of the Island of Cuba are, and of right ought to be, free and independent." The Senate finally gave way and the House resolution prevailed.

In discussing the Senate's share in the exercise of the treaty-making power, the author fails to note the interesting fact that in

recent years, with the growing importance of the President's control of foreign relations, the Senate has grown more jealous of its powers of advice and consent and that very few treaties of importance have passed that body without amendment and a number have been wholly rejected. The Olney-Pauncefote arbitration treaty was rejected. The treaty of peace with Spain was ratified with difficulty, notwithstanding the fact that three of the five peace commissioners were influential members of the Senate. The first Hay-Pauncefote Treaty was so amended that a new treaty had to be negotiated. The arbitration treaties negotiated by Hay in 1904 were so amended that President Roosevelt refused to refer them back to the other contracting parties. The Dominican treaty of 1905 was held up by the Senate for two years and finally agreed to in an amended form. The Taft arbitration treaties, the pending treaty with Colombia, and numerous other instances could be given.

While this volume is interesting and timely, it bears evidence of having been hastily put together and is hardly on a par with other work done by Professor Corwin in recent years.

JOHN H. LATANÉ.

Guía Práctica Para Los Diplomáticos Y Cónsules Peruanos. By Arturo García Salazar and Jorge Linch. Lima: Imp. Americana. 1918. 2 vols. pp. 647, 470.

The title of this book, *Practical Guide for Peruvian Diplomats and Consuls*, is not a misnomer; it gives a clear idea of the purposes that the authors, Messrs. Arturo García Salazar and Jorge Linch, had in view when preparing this very useful work. They are to be congratulated for having, within the compass of two volumes, gathered together in an orderly and systematic manner all that pertains to the practical side of the Peruvian diplomatic and consular careers.

In truth, we know few books that deal with the subject of diplomatic and consular enactments and practices, be they published in Spanish or in English, that are better or more thoroughly well prepared and so useful in their nature.

There is no doubt that its publication will be most serviceable to those who intend to enter, or are already in, the diplomatic or consular service of Peru, and a similar publication might be profita-

bly made by some enterprising house, if an author of reputation might be induced to prepare it, with regard to the American diplomatic and consular service.

The work which we have before us is comprised in two volumes, and there is scarcely anything relative to diplomats and consuls of Peru which is not dwelt upon. Especially interesting to Americans are the pages devoted in the first volume to Diplomatic Ceremonial, wherein full description is given of the visit of, and reception to, that great American statesman and jurist, Elihu Root, and to the American Atlantic and Pacific Naval Squadrons.

Let us say further that the authors of this work have very wisely devoted most of the pages of their publication to the practical side of the subjects discussed, and have given little space to elaborate the theories relative to matters pertaining to the diplomatic and consular service. Here they have shown how unfounded is the criticism made with regard to Latin-American authors, who are often accused of laying down theories and not viewing the subjects that they discuss from a practical or utilitarian point of view.

In conclusion, let us again congratulate Messrs. García Salazar and Linch for having written and published a most interesting and useful work.

JOSÉ F. GODOY.

Le Tunnel sous la Manche et le Droit International. By C. J. Colombos. Paris: Arthur Rousseau. 1917. pp. 163. 6 fr.

The distance from Dover to Calais is so slight that it is surprising to learn how recent is the suggestion of a tunnel. Apparently the earliest assignable date is 1802. Dr. Colombos traces the history from that time to the present day, and shows that the failure to bring the scheme to pass has been due, not to engineering difficulties, but to fears of invasion and of the spiritual disasters which might result from the destruction of British insularity. Only to a slight extent does he deal with the interesting question whether the tunnel would have affected materially the present war. The principal part of his discussion covers problems of international law.

Have France and England the right to construct such a tunnel without the consent of other Powers? The treatment of this question

opens novel and interesting lines of thought. What would be the jurisdiction of the respective countries regarding the several parts of the tunnel? It is obvious that much of the tunnel will be outside the marine league, and that problems of birth, marriage, contracts, and criminal law are to be considered; and, besides, there is much to be said regarding a possible difference between jurisdiction over the sea, over the bottom of the sea, and over the earth below the bottom, and also regarding the possibility that some regions are *res nullius* or *res extra commercium* or *res communis*. In time of war should the tunnel be free from destruction by the warring countries? Something is to be said, obviously enough, regarding the interest of the whole world and regarding the various sorts of neutralization and of internationalization; and, further, there is much to be said regarding the use of the tunnel for transporting contraband of war in case a war should arise between Great Britain and some country other than France.

The topics just now mentioned consume the principal part of Dr. Colombos' book; and the discussion of them and of collateral matters must be recognized as ingenious and timely. Here is a book rendered peculiarly interesting by the current war, but in no way influenced by the enmities which have weakened the scientific value of many recent writings on international law.

EUGENE WAMBAUGH

The War and the Bagdad Railway: The Story of Asia Minor and Its Relation to the Present Conflict. By Morris Jastrow. Philadelphia and London. J. B. Lippincott Co. \$1.50. 1917. 2d impression, February, 1918. pp. 160, il. 14, map.

There is undoubtedly a widespread demand for a popular explanation of some of the less known factors that served as contributing causes to the Great War, such as the controversy over the Bagdad Railway. Dr. Morris Jastrow, Jr., who is professor of Semitic languages at the University of Pennsylvania, has given us in this little volume an excellent account of the Bagdad Railway episode, which answers all the requirements of a popular treatise. The book is written in an interesting manner; and its historical accuracy is guaranteed by the high scholastic reputation of the

author. The narrative is divided into four parts: "The War in the East," "The Story of Asia Minor," "The Story of the Bagdad Railway," and "The Issue and the Outlook"; but the emphasis is laid chiefly upon the two middle chapters, to which the author devotes 91 pages, while giving only 38 to the other two. "The War in the East" is misleading as a title for the first chapter, for there is nothing in it concerning the military operations of the Great War in the Near East. Nor does the writer explain how Turkey was drawn into the conflict. This part of the volume is simply a brief statement of the significance of the highway across Asia Minor along which the Bagdad Railway has been built, with a few accompanying remarks about the attitude of Arabia and Islam to the war and the effect of the Bagdad Railway on the solidarity of the Ottoman Empire.

The second chapter on "The Story of Asia Minor," after a brief description of the physical features of the country, is devoted almost wholly to a history of Asia Minor from the days of the Hittites to 1878, with interesting references to the archaeological researches in that region in recent times. This is enlightening since it shows how many different civilizations have been built on the soil of that country and how many different peoples have contended in times past for supremacy on the same territory. It is unfortunate, however, that the author does not tell something about the present-day inhabitants of and the political conditions in this remarkable land, and that he gives but two short pages of indifferent statements to the developments between 1878 and 1914. The third part, dealing with the "Story of the Bagdad Railway," is excellent. It gives a complete account of the whole affair in a fair and unbiassed fashion, giving Germany proper credit for having started the railway as a purely commercial enterprise, and calling attention to the political phase of the question as it developed later. And there is a discussion of the diplomatic moves, and the contest for colonies and spheres of influence by European Powers in Africa and Asia, that created in the minds of German statesmen a desire to ear-mark Asia Minor for their own.

The last chapter on "The Issue and the Outlook" is taken up primarily with a discussion of how the War of 1914, inaugurated with certain selfish political aims, was transformed in 1917 into a contest for the preservation of democracy through Germany's con-

duct of the war, the Russian revolution, and the entrance of the United States into the struggle. And this is followed by some concluding remarks upon the necessity of bringing about cordial relations and proper intercourse between the West and the East. The author emphasizes the need of resuscitating the East and of securing cooperation between these two great sections of the world; and he closes with an appeal for the internationalization of Constantinople.

The writer announces that the purpose of the volume is to "elucidate an aspect of the war which . . . was the most significant factor contributing to the outbreak of the long-foreseen war in 1914." But one wonders if the author is not giving undue emphasis to a single feature of a great movement that reached out not only to Asia Minor, but also to the heart of Europe, to Africa, and to the Far East as well. And a perusal of the book raises the question whether the reader is getting the proper perspective of a remarkable situation when only one of its outstanding features is set forth at length. When he writes (page 115): "The control of this highway (the Bagdad Railway) is the key to the East—the Near and the Farther East as well. Such has been its rôle in the past—such is its significance today," he tells but a half truth. He forgets that there is a water route to the East quite as important as that by land. And, in the mind of the Pan-German the "Drang nach Osten" movement meant something more than the control of the Bagdad Railway. It included the control of the connecting link of water and rail routes via the Danube, the Black Sea and the Balkans, the supremacy of trade in the Eastern Mediterranean, the Balkans and the Black Sea, the suzerainty over the Ottoman Empire which possesses an economic treasure house in its Asia Minor lands, and the domination of the trade of the Persian Gulf, Persia, India and the Far East.

The famous Bagdad Railway project was only one feature of the notorious Near Eastern Question, which has caused the ruin of many a statesman and has been a source of unrest and trouble in European political circles for over two hundred years. It embraced the problems of three distinct regions: the Balkans, Asia Minor and the Persian Gulf. It involved the solution of great and complicated national questions in the Balkans and the Ottoman Empire; and it affected the future destinies of a number of races and native tribes. The German and Austrian interest in a solution of this Near Eastern Question, that would favor their own ambitions, was very great. But

that their desire to control the Bagdad Railway was a greater incentive to wage war than other motives, such as the ambition to secure the domination of the German people in the Balkans and Central Europe, is to be doubted, especially, when one recalls that in June, 1914, agreements had been initialled between Great Britain, Germany, France and Russia, which not only assured to the Germans permanent control of the Bagdad highway to the Persian Gulf, but also gave to them the lion's share of the future economic and commercial development of the central and richest portion of Asia Minor.

There is a certain looseness of terms in this volume and in other recent works on the Near East, which is probably due to the fact that earlier European writers always referred to Asia Minor and adjacent countries as the "Orient" or "East." Since the "Far East" has acquired a distinct individuality of its own, the time has now come to make a careful distinction in the different parts of the East. Writers and students of Asia and Asiatic affairs, as well as European statesmen, now recognize three chief regions on the great Eastern continent: the Near East, the Middle East, and the Far East. And it is imperative that those who wish to speak intelligently on questions relating to this part of the world should observe carefully this distinction.

The usefulness of the present work would have been improved if it had been provided with an index and a bibliography; but there are eight pages of excellent notes. An additional map, showing more clearly the strategic position of Asia Minor in relation to Europe and Asia, would have been a material asset also.

N. DWIGHT HARRIS.

Guide to the Law and Legal Literature of Argentina, Brazil, and Chile. By Edwin M. Borchard. Washington: Government Printing Office. 1917. pp. 523. \$1.00.

This book not merely fills one of the most pronounced gaps in English of matters relating to South America, but is also a very distinct contribution to the general literature on the subject which it treats. It is well written in a pleasant, easy style, and could be used to advantage as a text-book in our colleges, where so much instruction is now being given on Latin-America.

A particularly valuable feature of the work are the statements comparing the legislation in the three republics. It is to be hoped that Dr. Borchard will, at some future time, publish a more extended treatise on this particular phase of the subject. The accounts of the legal history of each country are concise and clear. The book is well divided, and the author does not fall into the error so common to many writers on South America, of over-emphasizing one country. Two or three slight changes might be suggested. In the section on Argentine constitutional law, pages 119 to 120, while mention is made of the fact that "Sarmiento was largely influenced by Story's works," it would have rendered this reference more interesting to note the translation of Story's work on the constitution into Spanish, made by Dr. Nicolas A. Calvo in Buenos Aires in 1888. This translation has had a great influence in Argentina. Since Dr. Borchard's work was finished, a new compilation of Argentine legislation is now being made by Dr. David Pena. Two very minor errors are: *Copiaco* instead of *Copiapo* (page 428), and that the statement that Roque Saenz Pena was *twice* President of Argentina (pages 46 and 182).

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PERIODICAL LITERATURE OF INTERNATIONAL LAW

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[*Abbreviations: BN.*, book note; *BR.*, book review; *Ed.*, editorial comment; *JD.*, judicial decision; *LA.*, leading article; *rev.*, reviewer; *Tr.*, translator.]

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68	Count von Mirbach	Athens, Aug. 15/28	The Greek troops of Cavalla have voluntarily surrendered the fortresses, batteries, and material.	160
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74	Mr. Naoum	Sofia, Feb. 15/28	Report of the Greek prefect of Drama on the abnormal situation reigning in his district. Numerous deaths by starvation. He asks the Greek Government to open a credit for the support of cheap bakeries in order to prevent further deaths.	166

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76	Mr. Naoum	Sofia, Mar. 27/April 9	The situation is getting worse in all parts of Eastern Macedonia occupied by the Bulgarians. Numerous deaths from starvation in Cavalla, Drama, and Serres. Same situation in the villages. Energetic steps by Mr. Naoum.	171
77	Mr. Naoum	Sofia, June 1/14	Annex: Note sent by Mr. Naoum to the Bulgarian Government. The population of Eastern Macedonia occupied by Bulgarians is transferred to the interior of Bulgaria. The situation of the families thus taken away is desperate. Deaths from starvation run into the thousands. Appeal by the mayor of Cavalla to the Greek Government in favor of financial aid in the form of a loan to the municipality.	174

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NETHERLANDS—GREAT BRITAIN. Correspondence respecting the transit across Holland of materials susceptible of employment as military supplies

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No.	Name	Date	Subject	Page
1	Memorandum communicated by Netherlands Minister	1917 Oct. 9	The Netherlands Government are bound by the Rhine Convention on the one hand and the Fifth Hague Convention on the other. Thus (a) only goods which have no connection with military operations are allowed to pass through the Netherlands from Belgium to Germany, nor is passage allowed to requisitioned goods. Certain melted copper, which was clearly non-requisitioned, has, however, been allowed to pass. (b) The amount of gravel, etc., allowed to pass through the Netherlands from Germany to Belgium has been restricted to the quantity which seems to the Netherlands Government, as the result of the investigation conducted in Belgium by two Netherlands engineer officers, to be necessary for non-military purposes—370,000 tons to be allowed through between 15th September and 15th November, in order to arrive before the waterways freeze. The Netherlands Government consider that in permitting transit to the above extent they have acted in full conformity with their duties as a neutral and with their conventional obligations.	

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		1817	They are therefore painfully surprised at the British Government's intention to discontinue all facilities for Dutch cables until the transit traffic entirely ceases.....	175
2	Mr. Balfour to M. van Swinderen to Mr. Balfour	Oct. 23	Transmits reply of His Majesty's Government to No. 1.....	178
3	Sir W. Townley (Telegraphic)	25	Netherlands Minister for Foreign Affairs says that M. van Swinderen's statement in No. 1, that copper was being allowed to pass, was made under a misapprehension, and that, in fact, none has been allowed to go through since his note of 10th June.....	182
4	M. van Swinderen to Mr. Balfour	26	Gives certain references in answer to request contained in No. 2 for information as to the stipulations of the Rhine Conventions.....	182
5	Mr. Balfour to M. van Swinderen	30	Transmits a further memorandum to meet request of Netherlands Government for evidence that sand transited across Holland has in fact been used for warlike purposes on arrival in Belgium. Also a sworn declaration on the subject.....	183
6	" " "	Nov. 6	As to the arguments based by the Netherlands Government on the treaties and regulations referred to in No. 4.....	190

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NETHERLANDS—GREAT BRITAIN. Correspondence respecting defensively armed British merchant vessels

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No.	Name	Date	Subject	Page
		1914		
1	Sir Edward Grey to Mr. Chilton (Telegraphic)	Aug. 8	Dutch Government should be informed that British armed merchantmen are armed only for purposes of defense and ought not to be interned or disarmed. As German merchantmen can be converted on the high seas, they should be interned, unless neutral government are prepared to assume responsibility that no such conversion shall take place	196
2	Mr. Chilton to Sir Edward Grey (Telegraphic)	9	Contents of No. 1 communicated to Minister for Foreign Affairs. Dutch Government agree as regards treatment of British and German merchant vessels, but Dutch officials must examine British vessels for form's sake	196
3	do (Telegraphic)	10	Reports naval attaché's conversation with Minister of Marine. Netherlands Government placed in a difficult position by request to differentiate between auxiliary cruisers and merchant vessels defensively armed	197
		1915		
4	Sir Edward Grey to Sir A. Johnstone	Mar. 7	Owing to submarine menace, number of defensively armed British merchant vessels may be increased. Do Netherlands Government still object to their entry into Dutch ports?	197
5	Sir A. Johnstone to Sir Edward Grey	April 8	Transmits reply of Dutch Government to No. 4. They are quite firm that such vessels may not be allowed access into their ports	198

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		1915		
6	Sir Edward Grey to Sir A. Johnstone	June 9	Transmits memorandum and pamphlet on the subject of defensively armed merchant ships for communication to the Netherlands Government.....	199
7	Sir A. Johnstone to Sir Edward Grey	July 31	Transmits note from Netherlands Government giving reasons which make it impossible for them to change their attitude	202
8	Sir Edward Grey to Sir A. Johnstone	Sept. 1	Acknowledges No. 7. His Majesty's Government learn of decision with keenest regret. While adhering in every way to views they have already expressed, they do not wish to continue the discussion with the Netherlands Government at the present time.....	203
		1917		
9	Sir W. Townley to Mr. Balfour (Telegraphic)	Mar. 6	British steamship <i>Princess Melita</i> arrived at Hook of Holland with gun. She was ordered out again, but returned later, having dismounted gun. Captain refused to leave port again without convoy.....	204
10	do (Telegraphic)	7	Captain dropped gun overboard outside territorial waters. Vessel now at Rotterdam, and will eventually proceed to sea with convoy.....	204
11	Mr. Balfour to Sir W. Townley (Telegraphic)	10	Views of His Majesty's Government on the exclusion of defensively armed merchantmen from Dutch ports.....	204
12	Sir W. Townley to Mr. Balfour	April 6	Transmits note from Netherlands Government setting forth in detail their reasons for refusing to allow armed merchantmen to enter their jurisdiction.....	205

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13	Lord Robert Cecil to Sir W. Townley	May 18	Arguments in No. 12 have received most careful consideration. Gives views of His Majesty's Government, who must hold Netherlands Government responsible for all losses to British ships trading to Holland if they may not be defensively armed.....	209
14	Sir W. Townley to Mr. Balfour	June 20	Transmits further note from Netherlands Government on the subject....	214
15	Mr. Balfour to Sir W. Townley	July 17	Transmits reply of His Majesty's Government to No. 14.....	220
16	Sir W. Townley to Mr. Balfour	Aug. 16	Further observations of Netherlands Government in reply to No. 15.....	223
17	Mr. Balfour to Sir W. Townley	Sept. 8	Points out general conclusions emerging from correspondence between the two governments. His Majesty's Government do not propose to continue discussion.....	226
18	Sir W. Townley to Mr. Balfour	Oct. 23	Comments of Netherlands Government on No. 17. They agree that further discussion of the question would present no advantage.....	228
19	Mr. Balfour to Sir W. Townley	Nov. 14	Observations of His Majesty's Government in reply to the last note, which attributes to them an attitude which they have never taken up, and which can not pass uncorrected.....	231

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British Legation to Netherland Ministry for Foreign Affairs	1914 Aug. 11	Calls attention to rule of international law requiring a neutral government to prevent the arming or fitting out or departure from its jurisdiction of any merchant vessel intended to be employed for war-like purposes, and requests issuance of necessary orders to prevent abuse of Netherland neutrality in this respect.....	233
	1915 Aug. 2	Calls attention to use of Dutch ports by British armed merchant ships and requests the Netherland Government to treat such ships as vessels of war.....	234
Netherland Ministry for Foreign Affairs to the German Legation	Sept. 7	Replies that Netherland Government regards armed merchant ships as assimilated to belligerent warships and denies that any such ships have been admitted to Dutch ports during the war.....	235
French Legation to Netherland Ministry for Foreign Affairs	1917 Mar. 15	Contends that belligerents have the right to arm merchant ships for self-defense against submarines; declines to admit contention of Netherland Government that the admission of merchant vessels armed for self-defense is a question of neutrality to be settled by each country as its interests demand irrespective of the principles of international law; and maintains that only such merchant ships as are converted into warships according to the Hague Convention may be assimilated to warships and treated as such in neutral ports.....	236

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	1917		
Netherland Ministry for Foreign Affairs to the French Legation	April 26	Replies that Holland's peculiar geographical situation made it necessary, in order to insure respect for its neutrality, to forbid armed merchant vessels from entering its dominion; defends the legality of its action in view of the Hague Conventions and maintains the distinction between the right of a belligerent merchant ship under the law of war to arm and defend itself against attack, and the right of a neutral to refuse admittance of such armed merchant ships to its ports under the law of neutrality; declines to change its attitude of assimilating armed merchant ships to warships.....	238
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Netherland Ministry for Foreign Affairs to American Legation	Mar. 22	Replies that presence of warships or vessels' assimilated thereto of foreign Powers is not permitted in Dutch waters, regardless of whether the armament is provided by the owner of the vessel or his Government.....	243
American Legation to the Netherland Ministry for Foreign Affairs	April 2	Assumes that above attitude of Holland refers to armed merchant ships of belligerents and not of neutrals, and asks confirmation of this view.....	244

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Netherland Ministry for Foreign Affairs to American Legation	1917 April 14	States that belligerent warships and armed merchant vessels assimilated thereto are not permitted within the jurisdiction of the state, including colonies and overseas possessions, while such vessels of neutral Powers are barred only from the dominion of the Kingdom in Europe.....	244

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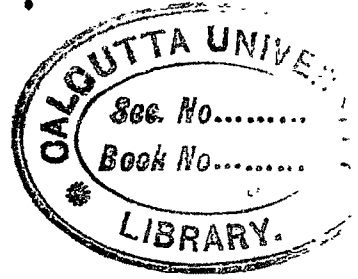
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EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND JAPAN CONCERNING THEIR MUTUAL INTEREST RELATING TO THE REPUBLIC OF CHINA ¹

Signed November 2, 1917

The Secretary of State to the Ambassador Extraordinary and Plenipotentiary of Japan, on Special Mission

DEPARTMENT OF STATE,
Washington, November 2, 1917.

Excellency:

I have the honor to communicate herein my understanding of the agreement reached by us in our recent conversations touching the questions of mutual interest to our Governments relating to the Republic of China.

In order to silence mischievous reports that have from time to time been circulated, it is believed by us that a public announcement once more of the desires and intentions shared by our two Governments with regard to China is advisable.

The Governments of the United States and Japan recognize that territorial propinquity creates special relations between countries, and, consequently, the Government of the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous.

The territorial sovereignty of China, nevertheless, remains unimpaired and the Government of the United States has every confidence in the repeated assurances of the Imperial Japanese Government that while geographical position gives Japan such special interests they have no desire to discriminate against the trade of other nations or to disregard the commercial rights heretofore granted by China in treaties with other Powers.

The Governments of the United States and Japan deny that they have any purpose to infringe in any way the independence or terri-

¹ U. S. Treaty Series, No. 630.

territorial integrity of China and they declare, furthermore, that they always adhere to the principle of the so-called "Open Door" or equal opportunity for commerce and industry in China.

Moreover, they mutually declare that they are opposed to the acquisition by any Government of any special rights or privileges that would affect the independence or territorial integrity of China or that would deny to the subjects or citizens of any country the full enjoyment of equal opportunity in the commerce and industry of China.

I shall be glad to have Your Excellency confirm this understanding of the agreement reached by us.

Accept, Excellency, the renewed assurance of my highest consideration.

ROBERT LANSING.

His Excellency

Viscount KIKUJIRO ISEII,

Ambassador Extraordinary and Plenipotentiary of Japan, on Special Mission.

The Ambassador Extraordinary and Plenipotentiary of Japan, on Special Mission, to the Secretary of State

THE SPECIAL MISSION OF JAPAN,
Washington, November 2, 1917.

SIR: I have the honor to acknowledge the receipt of your note of to-day, communicating to me your understanding of the agreement reached by us in our recent conversations touching the questions of mutual interest to our Governments relating to the Republic of China.

I am happy to be able to confirm to you, under authorization of my Government, the understanding in question set forth in the following terms:

In order to silence mischievous reports that have from time to time been circulated, it is believed by us that a public announcement once more of the desires and intentions shared by our two Governments with regard to China is advisable.

The Governments of Japan and the United States recognize that territorial propinquity creates special relations between countries, and, consequently, the Government of the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous.

The territorial sovereignty of China, nevertheless, remains unimpaired and the Government of the United States has every confidence in the repeated assurances of the Imperial Japanese Government that while geographical position gives Japan such special interests they have no desire to discriminate against the trade of other nations or to disregard the commercial rights heretofore granted by China in treaties with other Powers.

The Governments of Japan and the United States deny that they have any purpose to infringe in any way the independence or territorial integrity of China and they declare, furthermore, that they always adhere to the principle of the so-called "Open Door" or equal opportunity for commerce and industry in China.

Moreover, they mutually declare that they are opposed to the acquisition by any government of any special rights or privileges that would affect the independence or territorial integrity of China or that would deny to the subjects or citizens of any country the full enjoyment of equal opportunity in the commerce and industry of China.

I take this opportunity to convey to you, Sir, the assurances of my highest consideration.

K. ISHII,
*Ambassador Extraordinary and
Plenipotentiary of Japan on Special Mission.*

Honorable ROBERT LANSING,
Secretary of State.

DECLARATION OF THE CHINESE GOVERNMENT CONCERNING NOTES EX-
CHANGED BETWEEN JAPAN AND THE UNITED STATES ON NOVEMBER
2, 1917¹

November 12, 1917

The following declaration of the Chinese Government concerning the notes exchanged between the Governments of the United States and Japan, dated November 2, 1917, was handed to the Secretary of State by the Chinese Minister on November 12, 1917:

The Government of the United States and the Government of Japan have recently, in order to silence mischievous reports, effected an ex-

¹ *Official Bulletin*, November 14, 1917, p. 2.

change of notes at Washington concerning their desires and intentions with regard to China. Copies of the said notes have been communicated to the Chinese Government by the Japanese Minister at Peking, and the Chinese Government, in order to avoid misunderstanding, hastens to make the following declaration so as to make known the views of the government.

The principle adopted by the Chinese Government toward the friendly nations has always been one of justice and equality, and consequently the rights enjoyed by the friendly nations derived from the treaties have been consistently respected, and so even with the special relations between countries created by the fact of territorial contiguity, it is only in so far as they have already been provided for in her existing treaties. Hereafter the Chinese Government will still adhere to the principle hitherto adopted, and hereby it is again declared that the Chinese Government will not allow herself to be bound by any agreement entered into by other nations.

CHINESE LEGATION,

November 12, 1917.

PROCLAMATION OF ADDITIONAL REGULATIONS PRESCRIBING THE
CONDUCT OF ALIEN ENEMIES

No. 1408. November 16, 1917

WHEREAS the Congress of the United States in the exercise of the constitutional authority vested in them have resolved, by joint resolution of the Senate and House of Representatives bearing date of April 6th, 1917, "That the state of war between the United States and the Imperial German Government which has been thrust upon the United States is hereby formally declared";

WHEREAS it is provided by Section four thousand and sixty-seven of the Revised Statutes, as follows;

Whenever there is declared a war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States, by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed, as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be

observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety;

WHEREAS, by Section four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, further provision is made relative to alien enemies;

And WHEREAS, by a proclamation dated April 6th, 1917, I declared and established certain regulations prescribing the conduct of alien enemies;

Now, therefore, I, WOODROW WILSON, President of the United States of America, pursuant to the authority vested in me, hereby declare and establish the following regulations, additional and supplemental to those declared and established by said proclamation of April 6th, 1917, which additional and supplemental regulations I find necessary in the premises and for the public safety:

13. An alien enemy shall not approach or be found within one hundred yards of any canal; nor within one hundred yards of any wharf, pier or dock used directly by or by means of lighters by any vessel or vessels of over five hundred (500) tons gross engaged in foreign or domestic trade other than fishing; nor within one hundred yards of any warehouse, shed, elevator, railroad terminal or other terminal, storage or transfer facility adjacent to or operated in connection with any such wharf, pier or dock; and wherever the distance between any two of such wharves, piers or docks, measured along the shore line connecting them, is less than eight hundred and eighty yards, an alien enemy shall not approach or be found within one hundred yards of such shore line.

14. Whenever the Attorney General of the United States deems it to be necessary, for the public safety and the protection of transportation, to exclude alien enemies from the vicinity of any warehouse, elevator or railroad depot, yard or terminal which is not located within any prohibited area designated by this proclamation or the proclamation of April 6th, 1917, then an alien enemy shall not approach or be found within such distance of any such warehouse elevator, depot, yard or terminal as may be specified by the Attorney General by regulation duly made and declared by him; and the Attorney General is hereby authorized to fix, by regulations to be made and declared from time to time, the area surrounding any such warehouse, elevator, depot, yard or terminal from which he deems it necessary, for the public safety and the protection of transportation to exclude alien enemies.

15. An alien enemy shall not, except on public ferries, be found on any ocean, bay, river or other waters within three miles of the shore line of the United States or its territorial possessions; said shore line for the purpose of this proclamation being hereby defined as the line of sea coast and the shores of all waters of the United States and its territorial possessions connected with the high seas and navigable

by ocean going vessels; nor on any of the Great Lakes, their connecting waters or harbors, within the boundaries of the United States.

16. No alien enemy shall ascend into the air in any airplane, balloon, airship, or flying machine.

17. An alien enemy shall not enter or be found within the District of Columbia.

18. An alien enemy shall not enter or be found within the Panama Canal Zone.

19. All alien enemies are hereby required to register at such times and places and in such manner as may be fixed by the Attorney General of the United States and the Attorney General is hereby authorized and directed to provide, as speedily as may be practicable, for registration of all alien enemies and for the issuance of registration cards to alien enemies and to make and declare such rules and regulations as he may deem necessary for effecting such registration; and all alien enemies and all other persons are hereby required to comply with such rules and regulations; and the Attorney General in carrying out such registration, is hereby authorized to utilize such agents, agencies, officers and departments of the United States and of the several states, territories, dependencies and municipalities thereof and of the District of Columbia as he may select for the purpose, and all such agents, agencies, officers and departments are hereby granted full authority for all acts done by them in the execution of this regulation when acting by the direction of the Attorney General. After the date fixed by the Attorney General for such registration, an alien enemy shall not be found within the limits of the United States, its territories or possessions, without having his registration card on his person.

20. An alien enemy shall not change his place of abode or occupation or otherwise travel or move from place to place without full compliance with any such regulations as the Attorney General of the United States may, from time to time, make and declare; and the Attorney General is hereby authorized to make and declare, from time to time, such regulations concerning the movements of alien enemies as he may deem necessary in the premises and for the public safety, and to provide in such regulations for monthly, weekly or other periodical report by alien enemies to federal, state or local authorities; and all alien enemies shall report at the times and places and to the authorities specified in such regulations.

This proclamation and the regulations herein contained shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the District of Columbia, this sixteenth day of November, in the year of our Lord one thousand nine [SEAL.] hundred and seventeen, and of the independence of the United States the one hundred and forty-second.

WOODROW WILSON.

By the President:

FRANK L. POLK,
Acting Secretary of State.

EXECUTIVE ORDER DIRECTING TRANSMISSION OF LISTS OF INTERNED
ALIEN ENEMIES THROUGH THE RED CROSS

No. 2616. May 9, 1917

WHEREAS Section 4 of the Red Cross Convention signed at Geneva, July 6, 1906, to which the United States is a party, provides:

Belligerents will keep each other mutually advised of internments and transfers, together with admissions to hospitals and deaths which occur among the sick and wounded in their hands. They will collect all objects of personal use, valuables, letters, etc., which are found upon the field of battle, or have been left by the sick or wounded who have died in sanitary formations, or other establishments, for transmission to persons in interest through the authorities of their own country (35 Stat. Pt. 2, 1885, 1891).

AND WHEREAS the Charter of the American Red Cross of January 5, 1905, in Section 3, paragraph 4, provides:

That the purposes of this corporation are and shall be Fourth. To act in matters of voluntary relief and in accord with the military and naval authorities as a medium of communication between the people of the United States of America and their Army and Navy, and to act in such matters between similar national societies of other governments through the "Comité International de Secours" and the Government and the people and the Army and Navy of the United States of America. (33 Stat. 600)

Now therefore, in order that the said Conventional provision shall be carried out in good faith by the United States, it is ordered that the Executive Departments of the United States shall furnish to such representative as may be designated by the American Red Cross lists of all alien enemies now interned in the United States, to the end that the said lists may be forwarded to the International Red Cross at Geneva, in pursuance of the said recited provision of the Charter of the American Red Cross.

WOODROW WILSON.

THE WHITE HOUSE,
May 9, 1917.

ACT OF CONGRESS DEFINING THE STATUS OF AMERICAN CITIZENS WHO
HAVE ENTERED THE MILITARY OR NAVAL SERVICES OF THE ALLIED
COUNTRIES ¹

Approved October 5, 1917

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person formerly an American citizen, who may be deemed to have expatriated himself under the provisions of the first paragraph of section two of the Act approved March second, nineteen hundred and seven, entitled "An Act in reference to the expatriation of citizens and their protection abroad," by taking, since August first, nineteen hundred and fourteen, an oath of allegiance to any foreign State engaged in war with a country with which the United States is at war, and who took such oath in order to be enabled to enlist in the armed forces of such foreign State, and who actually enlisted in such armed forces, and who has been or may be duly and honorably discharged from such armed forces, may, upon complying with the provisions of this Act, reassume and acquire the character and privileges of a citizen of the United States: *Provided, however,* That no obligation in the way of pensions or other grants because of service in the army or navy of any other country, or disabilities incident thereto, shall accrue to the United States.

Any such person who desires so to reacquire and reassume the character and privileges of a citizen of the United States shall, if abroad, present himself before a consular officer of the United States, or, if in the United States, before any court authorized by law to confer American citizenship upon aliens, shall offer satisfactory evidence that he comes within the terms of this Act, and shall take an oath declaring his allegiance to the United States and agreeing to support the Constitution thereof and abjuring and disclaiming allegiance to such foreign State and to every foreign prince, potentate, State, or sovereignty. The consular officer or court officer having jurisdiction shall thereupon issue in triplicate a certificate of American citizenship, giving one copy to the applicant, retaining one copy for his files, and forwarding one copy to the Secretary of Labor. Thereafter such person shall in all respects be deemed to have acquired the character

¹ Public No. 55, 65th Congress.

and privileges of a citizen of the United States. The Secretary of State and the Secretary of Labor shall jointly issue regulations for the proper administration of this Act.

JOINT RESOLUTION DECLARING WAR BETWEEN AUSTRIA-HUNGARY
AND THE UNITED STATES ¹

Approved December 7, 1917

Whereas the Imperial and Royal Austro-Hungarian Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That a state of war is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government; and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

PROCLAMATION OF THE EXISTENCE OF WAR BETWEEN THE UNITED
STATES AND THE AUSTRO-HUNGARIAN EMPIRE

No. 1417. December 11, 1917

WHEREAS the Congress of the United States in the exercise of the constitutional authority vested in them have resolved, by joint resolution of the Senate and House of Representatives bearing date of December 7th, 1917, as follows:

Whereas the Imperial and Royal Austro-Hungarian Government has committed repeated acts of war against the Government and the people of the United States of America: Therefore be it

RESOLVED by the Senate and House of Representatives of the United States of America in Congress assembled, That a state of war is hereby declared to exist between the United States of America and the Imperial and Royal Austro-Hungarian Government; and that the President be, and he is hereby, authorized and

¹ Public Resolution No. 17, 65th Congress.

directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial and Royal Austro-Hungarian Government; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States.

WHEREAS, by Sections four thousand and sixty-seven, four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, provision is made relative to natives, citizens, denizens, or subjects of a hostile nation or government, being males of the age of fourteen years and upwards, who shall be in the United States and not actually naturalized;

Now, therefore, I, WOODROW WILSON, President of the United States of America, do hereby proclaim to all whom it may concern, that a state of war exists between the United States and the Imperial and Royal Austro-Hungarian Government; and I do specially direct all officers, civil or military, of the United States that they exercise vigilance and zeal in the discharge of the duties incident to such a state of war; and I do, moreover, earnestly appeal to all American citizens that they, in loyal devotion to their country, dedicated from its foundation to the principles of liberty and justice, uphold the laws of the land, and give undivided and willing support to those measures which may be adopted by the constitutional authorities in prosecuting the war to a successful issue and in obtaining a secure and just peace;

And, acting under and by virtue of the authority vested in me by the Constitution of the United States and the aforesaid sections of the Revised Statutes, I do hereby further proclaim and direct that the conduct to be observed on the part of the United States towards all natives, citizens, denizens, or subjects of Austria-Hungary, being males of the age of fourteen years and upwards, who shall be within the United States and not actually naturalized, shall be as follows:

All natives, citizens, denizens, or subjects of Austria-Hungary, being males of fourteen years and upwards, who shall be within the United States and not actually naturalized, are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof, and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States, and to comply strictly with the regulations which are hereby or which may be from time to time promulgated by the Presi-

dent; and so long as they shall conduct themselves in accordance with law, they shall be undisturbed in the peaceful pursuit of their lives and occupations and be accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States; and towards such of said persons as conduct themselves in accordance with law, all citizens of the United States are enjoined to preserve the peace and to treat them with all such friendliness as may be compatible with loyalty and allegiance to the United States.

And all natives, citizens, denizens, or subjects of Austria-Hungary, being males of the age of fourteen years and upwards, who shall be within the United States and not actually naturalized, who fail to conduct themselves as so enjoined, in addition to all other penalties prescribed by law, shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by sections four thousand and sixty-nine and four thousand and seventy of the Revised Statutes, and as prescribed in regulations duly promulgated by the President;

And pursuant to the authority vested in me, I hereby declare and establish the following regulations, which I find necessary in the premises and for the public safety:

- (1) No native, citizen, denizen or subject of Austria-Hungary, being a male of the age of fourteen years and upwards and not actually naturalized, shall depart from the United States until he shall have received such permit as the President shall prescribe, or except under order of a court, judge, or justice, under Sections 4069 and 4070 of the Revised Statutes;
- (2) No such person shall land in or enter the United States, except under such restrictions and at such places as the President may prescribe;
- (3) Every such person of whom there may be reasonable cause to believe that he is aiding or about to aid the enemy, or who may be at large to the danger of the public peace or safety, or who violates or attempts to violate, or of whom there is reasonable ground to believe that he is about to violate any regulation duly promulgated by the President, or any criminal law of the United States, or of the States or Territories thereof, will be subject to summary arrest by the United States Marshal, or his deputy, or such other officer as the President shall designate, and to confinement in such penitentiary, prison, jail, military camp, or other place of detention as may be directed by the President.

This proclamation and the regulations herein contained shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the District of Columbia, this eleventh day of December, in the year of our Lord one thousand nine hundred [SEAL.] and seventeen, and of the independence of the United States the one hundred and forty-second.

WOODROW WILSON.

By the President:

ROBERT LANSING,
Secretary of State.

EXECUTIVE ORDER ESTABLISHING CENSORSHIP OF SUBMARINE CABLES,
TELEGRAPH AND TELEPHONE LINES

No. 2604. April 28, 1917

WHEREAS, the existence of a state of war between the United States and the Imperial German Government makes it essential to the public safety that no communication of a character which would aid the enemy or its allies shall be had,

Therefore, by virtue of the power vested in me under the Constitution and by the Joint Resolution passed by Congress on April 5, 1917, declaring the existence of a state of war, it is ordered that all companies or other persons, owning, controlling or operating telegraph and telephone lines or submarine cables, are hereby prohibited from transmitting messages to points without the United States, and from delivering messages received from such points, except those permitted under rules and regulations to be established by the Secretary of War for telegraph and telephone lines, and by the Secretary of the Navy for submarine cables.

To these Departments, respectively, is delegated the duty of preparing and enforcing rules and regulations under this order to accomplish the purpose mentioned.

This order shall take effect from date.

WOODROW WILSON.

THE WHITE HOUSE,
28 April, 1917.

EXECUTIVE ORDER ESTABLISHING DEFENSIVE SEA AREAS

No. 2584. April 5, 1917

In accordance with the authority vested in me by section forty-four of the act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, as amended by the act "Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March fourth, nineteen hundred and seventeen, I, WOODROW WILSON, President of the United States of America, do order that defensive sea areas are hereby established, to be maintained until further notification, at the places and within the limits prescribed as follows, that is to say:—

Mouth of Kennebec River:

Outer Limit — Arc of circle with Pond Island Light as center, radius two (2) nautical miles.

Inner Limit — A line East and West (true) through Perkins Island Light.

Portland:

Outer Limit — Arc of circle center Portland Head Light, radius two (2) nautical miles.

Inner Limit — Line Portland Breakwater Light to west bastion Fort Gorges.

Portsmouth:

Outer Limit — Arc of circle with Whaleback Reef Light as center, radius two and one-half ($2\frac{1}{2}$) nautical miles.

Inner Limit — A line South (true) from southwest point of Clarks Island.

Boston:

Outer Limit — Line from Strawberry Point to Spouting Horn.

Inner Limit — Line west tangent Sheep Island to wharf on east side of Long Island.

Line from wharf west side Long Island to large wharf west side of Deer Island.

New Bedford:

Outer Limit — Arc of circle, center the east point of reef off Clark Point, radius distance to Dumping Rocks Lighthouse.

Inner Limit — Line between Butler Flats Light and Egg Island Beacon.

Newport:

Outer Limit — Arc of circle with Beaver Tail Light as center and radius of two (2) nautical miles.

Inner Limit — Fort Adams fog bell to north tangent of North Dumpling. East and West line through Plum Beach light.

Long Island East:

Outer Limit — Line joining Watch Hill and Montauk Point Lights.

Inner Limit — Line joining Plum Island Light and Mumford Point.

New York East:

Outer Limit — Line joining Execution Rocks Light and east tangent of Huckleberry Island.

Inner Limit — A line north (true) through Whitestone Point Light.

New York Main Entrance:

Outer Limit — Arc of circle center Romer Shoal Light, radius six (6) nautical miles.

Inner Limit — Line west (true) from flagpole on wharf at Fort Hamilton.

Delaware River:

Outer Limit — East and west line through north end of Reedy Island.

Inner Limit — East and west line through Finn's Neck Rear Range Light.

Chesapeake Entrance:

Outer Limit — Line parallel to that joining Cape Henry Light and Cape Charles Light and four (4) nautical miles to eastward thereof, and the lines from Cape Charles Light and from Cape Henry Light perpendicular to this line.

Inner Limit — Line parallel to line joining Cape Henry Light and Cape Charles Light and three (3) nautical miles to westward thereof.

Baltimore:

Outer Limit — Line from Persimmon Point to Love Point.

Inner Limit — Line joining Leading Point Range Light (Rear) and Sollers Point.

Potomac:

Outer Limit — Line from Marshall Hall wharf to south extremity of Ferry Point.

Inner Limit — Line from River View wharf drawn West (true).

Hampton Roads:

Outer Limit — Line from Back River Light to point one (1) nautical mile East (true) of Thimble Shoal Light; then South (true) to shore.

Inner Limit — Line tangent to end of wharf on west side of Old Point Comfort and Fort Wool.

Wilmington — Cape Fear:

Outer Limit — Oak Island Life Saving Station as center of arc, radius five (5) nautical miles.

Inner Limit — Line joining south end of Fort Caswell and Smith Island Range Beacon (Rear).

Charleston:

Outer Limit — Arc of circle with Fort Sumter Light as center, radius six (6) nautical miles.

Inner Limit — Line joining Charleston Light and Fort Sumter Light.

Savannah:

Outer Limit — Arc of circle with Tybee Island Light as center, radius ten (10) nautical miles.

Inner Limit — Line across channel through southeast end of Cockspur Island.

Key West:

Outer Limit — Arc or circle with Key West Light as center, radius seven (7) nautical miles.

Inner Limit — Line joining south tangent East Crawfish Key and south tangent of Fort Taylor.

Tampa:

Outer Limit — Arc of circle with Egmont Key Light as center, radius six (6) nautical miles.

Inner Limit — Line tangent to southwest point of Mullet Key and east tangent of Passage Key.

Pensacola:

Outer Limit — Arc of circle center Cut (Front) Range Light, radius six (6) nautical miles.

Inner Limit — South (true) from east corner of dock at Navy Yard old dry-dock slip.

Mobile:

Outer Limit — Arc of circle with Fort Morgan Light as center, radius six (6) nautical miles.

Inner Limit — Fort Gaines to Fort Morgan.

Mississippi:

Outer Limit — Lucas Canal.

Inner Limit — Bolivar Point.

Galveston:

Outer Limit — Arc of circle with Fort Point Light as center, radius five (5) nautical miles.

Inner Limit — Line joining Bolivar Point and Fort Point Lights.

San Diego:

Outer Limit — Arc of circle with Point Loma Light as center, radius two (2) nautical miles.

Inner Limit — Line joining Beacons Nos. 3 and 4.

San Francisco:

Outer Limit — Arc of circle with center at middle point of line joining Point Bonita Light and Rock at Cliff House, radius four (4) nautical miles.

Inner Limit — Line from Bluff Point to Point Campbell on Angel Island and line from Quarry Point on Angel Island to extreme western point on Goat Island; also line from extreme western point on Goat Island to North Point, San Francisco.

Columbia River:

Outer Limit — Arc of circle with center three (3) nautical miles south (true) from North Head Light, radius three (3) nautical miles.

Inner Limit — Line from wharf at Flavel Tansy Point at right angles to axis of channel.

Port Orchard:

Outer Limit — Arc of circle, center Orchard Rock Spindle, radius two (2) nautical miles.

Inner Limit — Line from Point White at right angles to axis of channel to opposite bank.

Honolulu:

Outer Limit — Arcs of circles centers Diamond Head Light and Honolulu Harbor Light, radii nine (9) nautical miles.

Inner Limit — Line across channel at No. 7 fixed light.

Manila:

Outer Limit — Line through Luzon Point and Fuego Point.

Inner Limit — Line through San Nicolas Shoal Light and Mt. Sungay.

The responsibility of the United States of America for any damage inflicted by force of arms with the object of detaining any person or vessel proceeding in contravention to Regulations duly promulgated in accordance with this Executive order shall cease from this date.

WOODROW WILSON.

THE WHITE HOUSE,
5 April, 1917.

REGULATIONS FOR CARRYING INTO EFFECT THE EXECUTIVE ORDER OF
THE PRESIDENT ESTABLISHING DEFENSIVE SEA AREAS

WHEREAS, in accordance with section forty-four of the Act entitled "An Act to codify, revise and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, as amended by "An Act making appropriations for the Naval Service, for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March fourth, nineteen hundred and seventeen, Defensive Sea Areas have been established by my order of April 5, 1917.

Now, therefore, I, WOODROW WILSON, President of the United States of America, do hereby authorize and promulgate the following orders and regulations for the government of persons and vessels within the limits of Defensive Sea Areas; which orders and regulations are necessary for purposes of national defense.

I. In the neighborhood of each Defensive Sea Area, entrances have been designated for incoming and outgoing vessels, including, in the case of Areas across which more than one channel exists, an entrance for each channel. These entrances are described in Article X of these Regulations in conjunction with the Areas to which they respectively pertain.

II. A vessel desiring to cross a Defensive Sea Area shall proceed to the vicinity of the entrance to the proper channel, flying her national

colors, together with International Code number and pilot signal, and there await communication with the Harbor Entrance Patrol. It is expressly prohibited for any vessel to enter the limits of a Defensive Sea Area otherwise than at a designated entrance and after authorization by the Harbor Entrance Patrol.

III. Boats and other craft employed in the Harbor Entrance Patrol will be distinguished by the union jack, which will be shown from a position forward; they will also fly the usual naval pennant. At night, they may show a vertical hoist of three lights — white, red, and white, in the order named.

IV. On receiving permission from the Harbor Entrance Patrol to enter a Defensive Sea Area, a vessel must comply with all instructions as to pilotage and other matters that she may receive from proper authority, either before or during her passage across the Area; it is understood that only upon condition of such compliance is the said permission granted.

V. No permission will be granted to other than a public vessel of the United States to cross a Defensive Sea Area between sunset and sunrise, nor during the prevalence of weather conditions that render navigation difficult or dangerous. A vessel arriving off a Defensive Sea Area after sunset shall anchor or lie-to at a distance of at least a mile outside its limits until the following sunrise; vessels discovered near the limits of the Areas at night may be fired upon.

VI. No vessel shall be permitted to proceed within the limits of a Defensive Sea Area at a greater speed than five (5) knots per hour.

VII. All matters pertaining to fishery and the passage of small crafts within a Defensive Sea Area shall be regulated by the Senior Officer of the Harbor Entrance Patrol.

VIII. These Regulations are subject to modification by the Senior Officer of the Harbor Entrance Patrol when the public interest may require; and such notification as circumstances may permit will be issued regarding modifications thus made.

IX. Any master of a vessel or other person within the vicinity of a Defensive Sea Area who shall violate these Regulations, or shall fail to obey an order to stop or heave to, or shall perform any act threatening the efficiency of mine or other defenses or the safety of navigation, or shall take any action inimical to the interests of the United States in its prosecution of war, may be detained therein by force of arms and renders himself liable to prosecution as provided

for in the Act to codify, revise and amend the penal laws of the United States, approved March 4, 1909, as amended by "the Act making appropriations for the Naval Service for the fiscal year ending June 30, 1918, and for other purposes," approved March 4, 1917.

X. The designated entrances to Defensive Sea Areas referred to in Article 1 of these Regulations shall be as follows:

Defensive Sea Area.	Designated Entrances for Incoming Vessels.	Designated Entrances for Outgoing Vessels.
Kennebec River, Maine.	Seguin Island Light bearing West (true) distant one (1) nautical mile.	In the channel between Perkins Island and Bald Head.
Portland, Maine.....	Portland Head Light bearing Northwest (true) distant two and one-half ($2\frac{1}{2}$) nautical miles.	In harbor north of Portland Breakwater Light.
Portsmouth, New Hampshire.	At a point one-half ($\frac{1}{2}$) nautical mile South (true) of Gunboat Shoal Buoy.	In the channel to the westward of Clark Island.
Boston, Massachusetts.	Boston Light Vessel.....	In President Roads west of a line drawn North and South (true), one-half ($\frac{1}{2}$) nautical mile west of Deer Island Light.
New Bedford, Massachusetts.	Dumpling Rocks Light bearing Northwest (true) distant one and one-half ($1\frac{1}{2}$) nautical miles.	In the channel west of Egg Island Beacon.
Newport, Rhode Island.	Beaver Tail Light bearing North (true) distant two and one-half ($2\frac{1}{2}$) nautical miles.	In the channel west of Goat Island. In the channel Northeast (true) of Plum Beach Light.
Long Island Sound, Eastern Entrance.	Watch Hill Light bearing Northwest (true) distant five (5) nautical miles.	Bartlett Reef Light Vessel.
Long Island Sound, West End.	Execution Rocks Light bearing Southwest (true) distant one (1) nautical mile.	In channel west of a line drawn North (true) from White-stone Light.

Defensive Sea Area.	Designated Entrances for Incoming Vessels.	Designated Entrances for Outgoing Vessels.
New York, Southern Entrance.	Sandy Hook Light bearing West (true) distant ten (10) nautical miles.	In Narrows north of a line drawn West (true) from flagpole on Fort Hamilton wharf.
Delaware River.....	In the channel below Reedy Island.	In the channel off Newcastle, Pennsylvania.
Chesapeake Bay Entrance.	Chesapeake Bay Main Ship Channel Entrance Buoy.	In the channel between buoys N2 and No. 3 Gas Buoy.
Baltimore, Md.....	At Buoy N2C, entrance to Craighill Channel.	In channel on line between Leading Point and Soller's Point.
Potomac River.....	In channel off Dague Creek...	In channel off River View.
Hampton Roads.....	In channel two (2) nautical miles to eastward and southward of Thimble Shoal Light.	In channel to Northwestward of entrance buoy of dredged channel, Elizabeth River.
Cape Fear, N. C.....	At a point four (4) nautical miles South-southwest (true) from Bell Buoy at entrance channel.	In channel near Beacon No. 2A, off Battery Island.
Charleston, South Carolina.	Charleston Light Ship.....	Lower anchorage to westward of North and South line (true) through Fort Sumter Light.
Tybee Roads, Savannah, Ga.	Four (4) nautical miles east of Whistling Buoy.	Quarantine anchorage.
Key West, Florida...	Sand Key Light bearing West-North-West (true) distant five (5) nautical miles.	In channel off fixed red beacon to North-North-Westward of Fort Taylor.
Tampa, Florida.....	Whistling Buoy, at entrance to dredged channel.	Off Quarantine Station.
Pensacola, Florida...	Pensacola Light bearing North-North-West (true) distant eight (8) nautical miles.	East corner of dock at Navy Yard bearing Northwest (true), distant one-half ($\frac{1}{2}$) nautical mile.

Defensive Sea Area.	Designated Entrances for Incoming Vessels.	Designated Entrances for Outgoing Vessels.
Mobile, Alabama....	Whistling Buoy at entrance bearing North (true) distant two (2) nautical miles.	Near Buoy C5.
Mississippi River....	South Pass Gas and Whistling Buoy.	Buras Church.
Galveston, Texas....	Lighted Buoy No. 1 off South Jetty, bearing West (true) distant two (2) nautical miles.	United States Quarantine Station.
San Diego, California.	Entrance Whistling Buoy....	Between Beacons 5 and 6.
San Francisco, California.	San Francisco Lightship.....	Off Quarry Point, Angel Island; and off Light, Goat Island.
Columbia River....	North Head Light bearing North-East (true) distant six (6) nautical miles.	In channel to eastward of Tansy Point.
Port Orchard, Washington.	In South to eastward of line joining Restoration Point and east end of Blake Island and one (1) nautical mile South (true) of Restoration Point.	To westward of Point White.
Honolulu, Hawaii....	Honolulu harbor light bearing North-North-East (true) distant ten (10) nautical miles.	In harbor north of Honolulu harbor lighthouse.
Manila, P. I.....	Peak of Corregidor Island bearing North-North-East (true) distant twelve (12) nautical miles.	San Nicolas Shoal Light bearing South (true) distant one (1) nautical mile.

The Secretary of the Navy will be charged with the publication and enforcement of these Regulations.

WOODROW WILSON.

THE WHITE HOUSE,
5 April, 1917.

EXECUTIVE ORDER ESTABLISHING ADDITIONAL DEFENSIVE SEA AREA

No. 2597. April 14, 1917.

In accordance with the authority vested in me by section forty-four of the act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, as amended by the act "Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for other purposes," approved March fourth, nineteen hundred and seventeen, I, WOODROW WILSON, President of the United States, do order that in addition to those defensive sea areas established by executive order under date of April fifth, nineteen hundred and seventeen, and subject to the same disclaimer of responsibility for damage inflicted as therein proclaimed, a defensive sea area is hereby established, to be maintained until further notification, at the place and within the limits described as follows; that is to say —

York River:

Outer limit. — Arc of circle with center at Tue Marshes Light, radius $2\frac{3}{4}$ nautical miles, to line from North tangent Tue Point to Buoy S "11-H," thence line to Tue Point.

Inner limit. — A line from Sandy Point to end of wharf on Carmines Island.

And I do further order that the "Regulations for Carrying into Effect the Executive Order of the President Establishing Defensive Sea Areas," approved by me April fifth, nineteen hundred and seventeen, duly promulgated and published, are and shall be considered as of full effect and binding on all persons and vessels within the limits of the defensive sea area hereby established.

The designated entrances to the defensive sea area herein established shall be as follows:

Entrance for incoming vessels, at Buoy N "2A."

Entrance for outgoing vessels, at Buoy N 6.

WOODROW WILSON.

THE WHITE HOUSE,
14 April, 1917.

EXECUTIVE ORDER CORRECTING EXECUTIVE ORDER NO. 2692,
ESTABLISHING DEFENSIVE SEA AREAS FOR TERMINAL PORTS OF
THE PANAMA CANAL¹

No. 2737. October 24, 1917

In order to correct a typographical error in the Executive Order dated August 27, 1917, entitled "Establishing Defensive Sea Areas for Terminal Ports of The Panama Canal, and Providing Regulations for the Government of Persons and Vessels Within Said Areas," it is hereby directed that the word "south" be substituted for the word "north" following the words "thence north 39° west to a point with San José Rock bearing" in the description of the outer limit of the Pacific entrance of the defensive sea areas of the terminal ports of The Panama Canal. As corrected, the description will read as follows:

PACIFIC ENTRANCE:

OUTER LIMIT. — Line joining Venado Island with north end of Taboguilla Island; thence north 53° east, true, for 5 miles; thence north 39° west to a point with San José Rock bearing south 53° west, true, distant 2 nautical miles; thence to Tres Hermanos Beacon; thence to Punta Mala.

WOODROW WILSON.

THE WHITE HOUSE,
24 October, 1917.

JOINT RESOLUTION AUTHORIZING THE TAKING OVER OF ENEMY
VESSELS²

Approved May 12, 1917

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which

¹ Executive Order No. 2692 was printed in this SUPPLEMENT for October, 1917 p. 168. — Ed.

² Public Resolution No. 2, 65th Congress.

the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and, through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

SEC. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation.

ACT OF CONGRESS PERMITTING FOREIGN ENLISTMENTS IN THE
UNITED STATES ¹

Approved May 7, 1917

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of chapter two of an Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, be amended so as to read as follows:

"SEC. 10. Whoever, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, State, colony, district, or people as a soldier or as a marine or seaman on board of any vessel of war, letter of marque, or privateer shall be fined not more than \$1,000 and imprisoned not more than three years: *Provided*, That this section shall not apply to citizens or subjects of any country engaged in war with a country with which the United States is at war, unless such citizen or subject of such foreign country shall hire or solicit a citizen

¹ Public No. 10, 65th Congress.

of the United States to enlist or go beyond the jurisdiction of the United States with intent to enlist or enter the service of a foreign country. Enlistments under this proviso shall be under regulations prescribed by the Secretary of War."

EXECUTIVE ORDER REGARDING MEASUREMENT OF FOREIGN SHIPS
ADMITTED TO AMERICAN REGISTRY

No. 2696. September 7, 1917

In pursuance of the authority conferred upon the President of the United States by Section 2 of the Act approved August 18, 1914, entitled "An Act to provide for the admission of foreign built ships to American registry for the foreign trade, and for other purposes" it is hereby ordered:

That the provisions of law requiring survey, inspection and measurement, by officers of the United States, of foreign built ships admitted to United States registry under said Act are hereby suspended so far and for such length of time as is herein provided, namely: The said provisions shall not apply to any such foreign built ship during the period of two years from September 1, 1917, provided the Secretary of Commerce is satisfied in the case of any such ship that the ship is safe and sea-worthy and that proper effort is being made to comply with the said provision.

WOODROW WILSON.

THE WHITE HOUSE,
7 September, 1917.

ACT OF CONGRESS PERMITTING FOREIGN VESSELS TO ENGAGE IN
COASTWISE TRADE¹

Approved October 6, 1917

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That during the present war with Germany and for a period of one hundred and twenty days thereafter the United States Shipping Board may, if in its judgment the interests of the United States require, suspend the present provisions

¹Public No. 73, 65th Congress.

of law and permit vessels of foreign registry, and foreign-built vessels admitted to American registry under the Act of August eighteenth, nineteen hundred and fourteen, to engage in the coastwise trade of the United States: *Provided*, That no such vessel shall engage in the coastwise trade except upon a permit issued by the United States Shipping Board, which permit shall limit or define the scope of the trade and the time of such employment: *Provided further*, That in issuing permits the board shall give preference to vessels of foreign registry owned, leased, or chartered by citizens of the United States or corporations thereof: *And provided further*, That the provisions of this Act shall not apply to the coastwise trade with Alaska or between Alaskan ports.

PROCLAMATION AUTHORIZING PAYMENTS ON ACCOUNT OF AMERICAN
PATENTS IN GERMANY

No. 1372. May 24, 1917

WHEREAS, the laws of the German Empire provide that letters patent granted or issued to citizens of other countries shall lapse unless certain taxes, annuities or fees are paid within stated periods;

And WHEREAS, the interests of the citizens of the United States in such letters patent are of great value, so that it is important that such payments should be made in order to preserve their rights;

Now, Therefore, I, WOODROW WILSON, President of the United States of America, by virtue of the powers vested in me as such, hereby declare and proclaim that citizens of the United States owning letters patent granted or issued by the German Empire are hereby authorized and permitted to make payment of any tax, annuity or fee which may be required by the laws of the German Empire for the preservation of their rights in such letters patent.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the city of Washington, this 24th day of May, in
the year of our Lord nineteen hundred and seventeen

[SEAL.] and of the Independence of the United States, the one
hundred and forty-first.

WOODROW WILSON.

By the President:

ROBERT LANSING,
Secretary of State.

EXECUTIVE ORDER ASSUMING CONTROL OF RADIO COMMUNICATIONS¹

No. 2605-A. April 30, 1917

WHEREAS the Senate and House of Representatives of the United States of America, in Congress assembled, have declared that a state of war exists between the United States and the Imperial German Government; and

WHEREAS it is necessary to operate certain radio stations for radio communication by the Government and to close other radio stations not so operated, to insure the proper conduct of the war against the Imperial German Government and the successful termination thereof,

Now, therefore, it is ordered by virtue of authority vested in me under the Constitution, under the Joint Resolution of Congress dated April 6, 1917, and under the Act to Regulate Radio Communication, approved August 13, 1912, that such radio stations within the jurisdiction of the United States as are required for Naval Communications shall be taken over by the Government of the United States and used and controlled by it, to the exclusion of any other control or use; and furthermore, that all radio stations not necessary to the Government of the United States for Naval Communications may be closed for radio communication and all radio apparatus therein may be removed therefrom.

The enforcement of this order is hereby delegated to the Secretary of the Navy, who is authorized and directed to take such action in the premises as to him may appear necessary.

This order shall take effect from and after this date.

WOODROW WILSON.

THE WHITE HOUSE,
April 30, 1917.

¹ The same order was issued April 6, 1917 (No. 2585), but did not contain in the third paragraph the reference to the Constitution and Joint Resolution of April 6 or the last nine words of that paragraph. — Ed.

AN ACT TO DEFINE, REGULATE, AND PUNISH TRADING WITH THE
ENEMY, AND FOR OTHER PURPOSES¹

Approved October 6, 1917

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Trading with the enemy Act."

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act —

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean —

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

¹ Public No. 91, 65th Congress.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean —

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

SEC. 3. That it shall be unlawful —

(a) For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

(c) For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however,* That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

(d) Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under

such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act.

SEC. 4. (a) Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this Act, apply to the President for a license to continue to do business; and, within thirty days after such application, the President may enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise, and for such period of time, and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company, or of such enemy or ally of enemy, as the President shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the President shall determine: *Provided, however,* That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the President to be doing business with such reinsurance company: *Provided further,* That no insurance company, organized within the United States, shall be obligated to continue any existing contract, entered into prior to the beginning of the war, with any enemy or ally of enemy insurance or reinsurance company, but any such company may abrogate and cancel any such contract by serving thirty days' notice in writing upon the President of its election to abrogate such contract.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made by any enemy or ally of enemy insurance or reinsurance com-

pany, within such thirty days as above provided, the provisions of the President's proclamation of April sixth, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such German insurance companies, and the conditions of said proclamation of April sixth, nineteen hundred and seventeen, as modified by said proclamation of July thirteenth, nineteen hundred and seventeen, shall also during said period of thirty days after the passage of this Act, and pending the order of the President as herein provided, apply to any enemy or ally of enemy insurance or reinsurance company, anything in this Act to the contrary notwithstanding. It shall be unlawful for any enemy or ally of enemy insurance or reinsurance company, to whom license is granted, to transmit out of the United States any funds belonging to or held for the benefit of such company or to use any such funds as the basis for the establishment, directly or indirectly, of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made within such thirty days by any enemy or ally of enemy, other than an insurance or reinsurance company as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, on account of, on behalf of, or for the benefit of such enemy or ally of enemy, anything in this Act to the contrary notwithstanding: *Provided, however,* That the provisions of sections three and sixteen hereof shall apply to any act or attempted act of transmission or transfer of money or other property out of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

If no license is applied for within thirty days after the passage of this Act, or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company or other person, making application, or if any license granted shall be revoked by the Presi-

dent, the provisions of sections three and sixteen hereof shall forthwith apply to all trade or to any attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other person: *Provided, however,* That after such refusal or revocation, anything in this Act to the contrary notwithstanding, it shall be lawful for a policyholder or for an insurance company, not an enemy or ally of enemy, holding insurance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company, to receive payment of, and for such enemy or ally of enemy insurance or reinsurance company to pay any premium, return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the date of such refusal or revocation of license; and nothing in this Act shall vitiate or nullify then existing policies or contracts of insurance or reinsurance, or the conditions thereof; and any such policyholder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the alien property custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof.

(b) That, during the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

Whenever, during the present war, in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper.

SEC. 5. (a) That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act so far as they apply to an ally of enemy and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall pre-

scribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b) That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed.

SEC. 6. That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed \$5,000 per annum) of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for

the same under the general direction of the President and as provided in this Act. The alien property custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees, as he may find necessary for the due administration of the provisions of this Act: *Provided*, That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law: *Provided further*, That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof.

SEC. 7. (a) That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such rules and regulations as the President may prescribe and, within sixty days after the passage of this Act, and at such other times thereafter as the President may require, transmit to the alien property custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

The President may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, associa-

tion, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another: *Provided, however,* That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the alien property custodian when he shall be satisfied that he is not such enemy or ally of enemy.

Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien-property custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: *Provided,* That the name of any person shall be stricken from the said report by the alien-property custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy. The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days.

(b) Nothing in this Act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for or on account of, or on behalf of for the benefit of an enemy performed or engaged in since the beginning of the war and prior to the passage of this Act, or any such act or transaction hereafter performed or engaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or invalid at law. No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section three hereof, made

after the passage of this Act, and not under license as herein provided shall confer or create any right or remedy in respect thereof; and no person shall by virtue of any assignment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay, fulfill, or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided, or unless, if made after the beginning of the war and prior to the date of passage of this Act, the person to whom the same was made shall prove lack of knowledge and of reasonable cause to believe on his part that the same was made by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy; and any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action shall, on conviction thereof, be deemed to violate section three hereof: *Provided*, That nothing in this Act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved by assignment or otherwise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder.

Nothing in this Act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States not an enemy or ally of enemy, for the benefit of such person or of any other person within the United States, not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war, and not in contemplation thereof: *Provided*, That such payment shall not be made without the license of the President, general or special, as provided in this Act.

Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof: *Provided, however*, That an enemy

or ally of enemy licensed to do business under this Act may prosecute and maintain any such suit or action so far as the same arises solely out of the business transacted within the United States under such license and so long as such license remains in full force and effect: *And provided further*, That an enemy or ally of enemy may defend by counsel any suit in equity or action at law which may be brought against him.

Receipt of notice from the President to the effect that he has reasonable ground to believe that any person is an enemy or ally of enemy shall be prima facie defense to any one receiving the same, in any suit or action at law or in equity brought or maintained, or to any right or set-off or recoupment asserted by, such person and based on failure to complete or perform since the beginning of the war any contract or other obligation. In any prosecution under section sixteen hereof, proof of receipt of notice from the President to the effect that he has reasonable cause to believe that any person is an enemy or ally of enemy shall be prima facie evidence that the person receiving such notice has reasonable cause to believe such other person to be an enemy or ally of enemy within the meaning of section three hereof.

(c) If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

(d) If not required to pay, convey, transfer, assign, or deliver under the provisions of subsection (c) hereof, any person not an enemy or ally of enemy who owes to, or holds for, or on account of, or on behalf of, or for the benefit of an enemy or of an ally of enemy not holding a license granted by the President hereunder, any money or other property, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, may, at his option, with the consent of the President, pay, convey, transfer, assign, or deliver to the alien property custodian said money or other property under such rules and regulations as the President shall prescribe.

(e) No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of

money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. The President shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the United States. Whenever any such certificate of authority shall be offered to any registrar, clerk, or other recording officer, Federal or otherwise, within the United States, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the United States or other courts within the United States.

SEC. 8. (a) That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon

the enemy or ally of enemy personally: *Provided*, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this Act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: *Provided further*, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage, pledge, lien, or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

(b) That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of an enemy, the terms of which provide for the delivery, during or after any war in which a present enemy or ally of enemy nation has been or is now engaged, of anything produced, mined, or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the alien property custodian of his or its election to abrogate such contract.

(c) The running of any statute of limitations shall be suspended with reference to the rights or remedies on any contract or obligation entered into prior to the beginning of the war between parties neither of whom is an enemy or ally of enemy, and containing any promise to pay or liability for payment which is evidenced by drafts or other commercial paper drawn against or secured by funds or other property situated in an enemy or ally of enemy country, and no suit shall be maintained on any such contract or obligation in any court within the United States until after the end of the war, or until the said funds or property shall be released for the payment or satisfaction of such contract or obligation: *Provided, however*, That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law.

SEC. 9. That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the

Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the alien property custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the alien property custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the alien property custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the alien property custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated.

Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the alien property cus-

todian shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

This section shall not apply, however, to money paid to the alien property custodian under section ten hereof.

SEC. 10. That nothing contained in this Act shall be held to make unlawful any of the following acts:

(a) An enemy, or ally of enemy, may file and prosecute in the United States an application for letters patent, or for registration of trade-mark, print, label, or copyright, and may pay any fees therefor in accordance with and as required by the provisions of existing law and fees for attorneys or agents for filing and prosecuting such applications. Any such enemy, or ally of enemy, who is unable during war, or within six months thereafter, on account of conditions arising out of war, to file any such application, or to pay any official fee, or to take any action required by law within the period prescribed by law, may be granted an extension of nine months beyond the expiration of said period, provided the nation of which the said applicant is a citizen, subject, or corporation shall extend substantially similar privileges to citizens and corporations of the United States.

(b) Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trade-marks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trade-mark, print, label, or copyright in the country of an enemy, or of an ally of enemy after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonex-

clusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding \$100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions

of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) Any enemy, or ally of enemy, may institute and prosecute

suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

(h) All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section, shall be valid.

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government.

SEC. 11. Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the

President or by Congress: *Provided, however,* That no preference shall be given to the ports of one State over those of another.

SEC. 12. That all moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depository, or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or other suitable depository or depositaries, located and doing business in the United States. The alien property custodian may deposit with such designated depository or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depository or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depository or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in

respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however,* That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further,* That the Treasurer of the United States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee.

SEC. 13. That, during the present war, in addition to the facts required by sections forty-one hundred and ninety-seven, forty-one hundred and ninety-eight, and forty-two hundred of the Revised Statutes, as amended by the Act of June fifteenth, nineteen hundred and seventeen, to be set out in the master's and shipper's manifests before clearance will be issued to vessels bound to foreign ports, the master or person in charge of any vessel, before departure of such vessel from port, shall deliver to the collector of customs of the district wherein such vessel is located a statement duly verified by oath that the cargo is not shipped or to be delivered in violation of this Act, and the owners, shippers, or consignors of the cargo of such vessels shall in like manner deliver to the collector like statement under oath as to the cargo or the parts thereof laden or shipped by them, respectively, which statement shall contain also the names and addresses of the actual consignees of the cargo, or if the shipment is made to a bank or other broker, factor, or agent, the names and addresses of the persons who are the actual consignees on whose account the shipment is made. The master or person in control of the vessel shall, on reaching port of destination of any of the cargo, deliver a copy of the manifest and of the said master's, owner's, shipper's, or consignor's statement to the American consular officer of the district in which the cargo is unladen.

SEC. 14. That, during the present war, whenever there is reasonable cause to believe that the manifest or the additional statements under oath required by the preceding section are false or that any vessel, domestic or foreign, is about to carry out of the United States any property to or for the account or benefit of an enemy, or ally of enemy, or any property or person whose export, taking out, or transport will be in violation of law, the collector of customs for the district in which such vessel is located is hereby authorized and empowered subject to review by the President to refuse clearance to any such vessel, domestic or foreign, for which clearance is required by law, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, to forbid the departure of such vessel from the port, and it shall thereupon be unlawful for such vessel to depart.

The collector of customs shall, during the present war, in each case report to the President the amount of gold or silver coin or bullion or

other moneys of the United States contained in any cargo intended for export. Such report shall include the names and addresses of the consignors and consignees, together with any facts known to the collector with reference to such shipment and particularly those which may indicate that such gold or silver coin or bullion or moneys of the United States may be intended for delivery or may be delivered, directly or indirectly, to an enemy or an ally of enemy.

SEC. 15. That the sum of \$450,000 is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be used in the discretion of the President for the purpose of carrying out the provisions of this Act during the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for the payment of salaries of all persons employed under this Act, together with the necessary expenses for transportation, subsistence, rental of quarters in the District of Columbia, books of reference, periodicals, stationery, typewriters and exchanges thereof, miscellaneous supplies, printing to be done at the Government Printing Office, and all other necessary expenses not included in the foregoing.

SEC. 16. That whoever shall wilfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall wilfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

SEC. 17. That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary."

SEC. 18. That the several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas and of conspiracies to commit such offenses as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of such section for the purpose of this Act are hereby extended to the Philippine Islands and to the Canal Zone.

SEC. 19. That ten days after the approval of this Act and until the end of the war, it shall be unlawful for any person, firm, corporation, or association, to print, publish, or circulate, or cause to be printed, published, or circulated in any foreign language, any news item, editorial or other printed matter, respecting the Government of the United States, or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war, or any matter relating thereto: *Provided*, That this section shall not apply to any print, newspaper, or publication where the publisher or distributor thereof, on or before offering the same for mailing, or in any manner distributing it to the public, has filed with the postmaster at the place of publication, in the form of an affidavit, a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper, or publication, and has caused to be printed, in plain type in the English language, at the head of each such item, editorial, or other matter, on each copy of such print, newspaper, or publication, the words "True translation filed with the postmaster at _____ on _____ (naming the post office where the translation was filed, and the date of filing thereof), as required by the Act of _____ (here giving the date of this Act).

Any print, newspaper, or publication in any foreign language which does not conform to the provisions of this section is hereby declared to be nonmailable, and it shall be unlawful for any person, firm, corporation, or association, to transport, carry, or otherwise publish or distribute the same, or to transport, carry or otherwise publish or distribute any matter which is made nonmailable by the provisions of the Act relating to espionage, approved June fifteenth, nineteen hundred and seventeen: *Provided further*, That upon evi-

dence satisfactory to him that any print, newspaper, or publication, printed in a foreign language may be printed, published, and distributed free from the foregoing restrictions and conditions without detriment to the United States in the conduct of the present war, the President may cause to be issued to the printers or publishers of such print, newspaper, or publication, a permit to print, publish, and circulate the issue or issues of their print, newspaper, or publication, free from such restrictions and requirements, such permits to be subject to revocation at his discretion. And the Postmaster General shall cause copies of all such permits and revocations of permits to be furnished to the postmaster of the post office serving the place from which the print, newspaper, or publication, granted the permit is to emanate. All matter printed, published and distributed under permits shall bear at the head thereof in plain type in the English language, the words, "Published and distributed under permit authorized by the Act of (here giving date of this Act), on file at the post office of (giving name of office)."

Any person who shall make an affidavit containing any false statement in connection with the translation provided for in this section shall be guilty of the crime of perjury and subject to the punishment provided therefor by section one hundred and twenty-five of the Act of March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States," and any person, firm, corporation, or association, violating any other requirement of this section shall, on conviction thereof, be punished by a fine of not more than \$500, or by imprisonment of not more than one year, or, in the discretion of the court, may be both fined and imprisoned.

Approved, October 6, 1917.

EXECUTIVE ORDER VESTING POWER AND AUTHORITY IN DESIGNATED
OFFICERS AND MAKING RULES AND REGULATIONS UNDER TRADING
WITH THE ENEMY ACT AND TITLE VII OF THE ACT APPROVED JUNE
15, 1917¹

No. 2729-A. October, 12, 1917

By virtue of the authority vested in me by "An Act to Define, Regulate and Punish Trading with the Enemy and for Other Purposes," approved October 6, 1917, and by Title VII of the Act approved June 15, 1917, entitled "An Act to Punish Acts of Interference with the Foreign Relations, the Neutrality and the Foreign Commerce of the United States, to Punish Espionage and Better to Enforce the Criminal Laws of the United States and for Other Purposes," (hereinafter designated as the Espionage Act), I hereby make the following orders and rules and regulations:

WAR TRADE BOARD

I. I hereby establish a War Trade Board to be composed of representatives, respectively, of the Secretary of State, of the Secretary of the Treasury, of the Secretary of Agriculture, of the Secretary of Commerce, of the Food Administrator, and of the United States Shipping Board.

II. I hereby vest in said Board the power and authority to issue licenses under such terms and conditions as are not inconsistent with law, or to withhold or refuse licenses, for the exportation of all articles, except coin, bullion or currency, the exportation or taking of which out of the United States may be restricted by proclamations heretofore or hereafter issued by me under said Title VII of the Espionage Act.

III. I further hereby vest in said War Trade Board the power and authority to issue, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse, licenses for the importation of all articles the importation of which may be restricted by any proclamation hereafter issued by me under Section 11 of the Trading with the Enemy Act.

¹ The Act of June 15, 1917, was printed in this SUPPLEMENT for October, 1917, p. 178.

IV. I further hereby vest in said War Trade Board the power and authority not vested in other officers by subsequent provisions of this order, to issue, under such terms and conditions as are not inconsistent with law, or to withhold or refuse, licenses to trade either directly or indirectly with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade directly or indirectly for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

V. I further hereby vest in said War Trade Board the power and authority, under such terms and conditions as are not inconsistent with law, to issue to every enemy or ally of enemy, other than enemy or ally of enemy insurance or reinsurance companies, doing business within the United States through an agency or branch office, or otherwise, applying therefor within thirty days of October 6, 1917, licenses temporary or otherwise to continue to do business, or said Board may withhold or refuse the same.

VI. And I further hereby vest in said War Trade Board the executive administration of the provisions of Section 4 (b) of the Trading with the Enemy Act relative to granting licenses to enemies and enemy allies to assume or use other names than those by which they were known at the beginning of the war. And I hereby authorize said Board to issue licenses not inconsistent with the provisions of law or to withhold or refuse licenses to any enemy, or ally of enemy, or partnership of which an enemy or ally of enemy is a member or was a member at the beginning of the war, to assume or use any name other than that by which such enemy or ally of enemy or partnership was ordinarily known at the beginning of the war.

VII. I hereby revoke the executive order of August 21, 1917, creating the Exports Administrative Board. All proclamations, rules, regulations and instructions made or given by me under Title VII of the Espionage Act and now being administered by the Exports Administrative Board are hereby continued, confirmed and made applicable to the War Trade Board, and all employees of the Exports Administrative Board are hereby transferred to and constituted employees of the War Trade Board in the same capacities, and said War Trade Board is hereby authorized to exercise without interruption, the powers heretofore exercised by said Exports Administrative Board.

VIII. The said War Trade Board is hereby authorized and empowered to take all such measures as may be necessary or expedient to administer the powers hereby conferred. And I hereby vest in the War Trade Board the power conferred upon the President by Section 5 (a) to make such rules and regulations, not inconsistent with law, as may be necessary and proper for the exercise of the powers conferred upon said Board.

WAR TRADE COUNCIL

IX. I hereby establish a War Trade Council to be composed of the Secretary of State, Secretary of the Treasury, Secretary of Agriculture, Secretary of Commerce, the Food Administrator and the Chairman of the Shipping Board, and I hereby authorize and direct the said War Trade Council thus constituted to act in an advisory capacity in such matters under said Acts as may be referred to them by the President or the War Trade Board.

SECRETARY OF THE TREASURY

X. I hereby vest in the Secretary of the Treasury the executive administration of any investigation, regulation or prohibition of any transaction in foreign exchange, export or earmarking of gold or silver coin, or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States) and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, or between residents of one or more foreign countries, by any person within the United States; and I hereby vest in the Secretary of the Treasury the authority and power to require any person engaged in any such transaction to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed.

XI. I further hereby vest in the Secretary of the Treasury the executive administration of the provisions of subsection (e) of Section 3 of the Trading with the Enemy Act relative to sending, or taking out of, or bringing into, or attempting to send, take out of, or bring into, the United States, any letter, writing or tangible form of com-

munication, except in the regular course of the mail; and of the sending, taking, or transmitting, or attempting to send, take, or transmit, out of the United States, any letter, or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy. And said Secretary of the Treasury is hereby authorized and empowered to issue licenses to send, take or transmit out of the United States anything otherwise forbidden by said subsection (c) and give such consent or grant such exemption in respect thereto, as is not inconsistent with law, or to withhold or refuse the same.

XII. I further authorize the Secretary of the Treasury to grant a license under such terms and conditions as are not inconsistent with law or to withhold or refuse the same to any "enemy" or "ally of enemy" insurance or reinsurance company doing business within the United States through an agency or branch office or otherwise, which shall make application within thirty days of October 6, 1917.

XIII. I hereby authorize and direct the Secretary of the Treasury, for the purpose of such executive administration, to take such measures, adopt such administrative procedure, and use such agency or agencies as he may from time to time deem necessary and proper for that purpose. The proclamation of the President, dated September 7, 1917, made under authority vested in him by Title VII of said Act of Congress, approved June 15, 1917, shall remain in full force and effect. The executive order, dated September 7, 1917, made under the authority of said title shall remain in full force and effect until new regulations shall have been established by the President, or by the Secretary of the Treasury, with the approval of the President, and thereupon shall be superseded.

CENSORSHIP BOARD

XIV. I hereby establish a Censorship Board to be composed of representatives, respectively, of the Secretary of War, the Secretary of the Navy, the Postmaster General, the War Trade Board, and the Chairman of the Committee on Public Information.

XV. And I hereby vest in said Censorship Board the executive administration of the rules, regulations and proclamations from time to time established by the President under subsection (d) of section 3,

of the Trading with the Enemy Act, for the censorship of communications by mail, cable, radio or other means of transmission passing between the United States and any foreign country from time to time specified by the President, or carried by any vessel, or other means of transportation touching at any port, place or territory of the United States and bound to or from any foreign country.

XVI. The said Censorship Board is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

FEDERAL TRADE COMMISSION

XVII. I further hereby vest in the Federal Trade Commission the power and authority to issue licenses under such terms and conditions as are not inconsistent with law or to withhold or refuse the same, to any citizen of the United States or any corporation organized within the United States to file and prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay the fees required by law and the customary agents' fees, the maximum amount of which in each case shall be subject to the control of such Commission; or to pay to any enemy or ally of enemy any tax, annuity or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents, trade-marks, prints, labels and copyrights.

XVIII. I hereby vest in the Federal Trade Commission the power and authority to issue, pursuant to the provisions of Section 10 (c) of the Trading with the Enemy Act, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse, a license to any citizen of the United States, or any corporation organized within the United States, to manufacture or cause to be manufactured a machine, manufacture, composition of matter, or design, or to carry on or cause to be carried on a process under any patent, or to use any trade-mark, print, label, or copyrighted matter owned or controlled by an enemy or ally of enemy, at any time during the present war; and also to fix the prices of articles and products manufactured under such licenses necessary to the health of the military and the naval forces of the United States, or the successful prosecution of the war; and to prescribe the fee which may be charged for such license, not exceeding \$100.00 and not exceeding 1 per centum of the fund deposited by the licensee with the Alien Property Custodian as provided by law.

XIX. I hereby further vest in the said Federal Trade Commission the executive administration of the provisions of Section 10 (d) of the Trading with the Enemy Act, the power and authority to prescribe the form of, and time and manner of filing statements of the extent of the use and enjoyment of the license and of the prices received and the times at which the licensee shall make payments to the Alien Property Custodian, and the amounts of said payments, in accordance with the Trading with the Enemy Act.

XX. I further hereby vest in the Federal Trade Commission the power and authority, whenever in its opinion the publication of an invention or the granting of a patent may be detrimental to the public safety or defense, or may assist the enemy, or endanger the successful prosecution of the war, to order that the invention be kept secret and the grant of letters patent withheld until the end of the war.

XXI. The said Federal Trade Commission is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

THE POSTMASTER GENERAL

XXII. I hereby vest in the Postmaster General the executive administration of all the provisions (except the penal provisions) of Section 19, of the Trading with the Enemy Act, relating to the printing, publishing or circulation in any foreign language of any news item, editorial, or other printed matter respecting the Government of the United States or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war or any matter relating thereto, and the filing with the Postmaster at the place of publication, in the form of an affidavit of a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper or publication, and the issuance of permits for the printing, publication and distribution thereof free from said restriction. And the Postmaster General is authorized and empowered to issue such permits upon such terms and conditions as are not inconsistent with law and to refuse, withhold or revoke the same.

XXIII. The sum of \$35,000.00 or so much thereof as may be necessary is hereby allotted out of the funds appropriated by the Trading with the Enemy Act, to be expended by the Postmaster General in the administration of said Section 19 thereof.

XXIV. The Postmaster General is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

SECRETARY OF STATE

XXV. I hereby vest in the Secretary of State the executive administration of the provisions of subsection (b) of Section 3 of the Trading with the Enemy Act relative to any person transporting or attempting to transport any subject or citizen of an enemy or ally of enemy nation, and relative to transporting or attempting to transport by any owner, master or other person in charge of a vessel of American registry, from any place to any other place, such subject or citizen of an enemy or enemy ally.

XXVI. And I hereby authorize and empower the Secretary of State to issue licenses for such transportation of enemies and enemy allies or to withhold or refuse the same.

XXVII. And said Secretary of State is hereby authorized and empowered to take all such measures as may be necessary or expedient to administer the powers hereby conferred and to grant, refuse, withhold or revoke licenses thereunder.

SECRETARY OF COMMERCE

XXVIII. I hereby vest in the Secretary of Commerce the power to review the refusal of any Collector of Customs under the provisions of Sections 13 and 14 of the Trading with the Enemy Act, to clear any vessel, domestic or foreign, for which clearance is required by law.

ALIEN PROPERTY CUSTODIAN

XXIX. I hereby vest in an Alien Property Custodian, to be hereafter appointed, the executive administration of all the provisions of Section 7 (a), Section 7 (c), and Section 7 (d) of the Trading with the Enemy Act, including all power and authority to require lists and reports, and to extend the time for filing the same, conferred upon the President by the provisions of said Section 7 (a), and including the power and authority conferred upon the President by the provisions of said Section 7(c), to require the conveyance, transfer, assignment, delivery or payment to himself, at such time and in such manner as

he shall prescribe, of any money or other properties owing to or belonging to or held for, by or on account of, or on behalf of, or for the benefit of any enemy or ally of an enemy, not holding a license granted under the provisions of the Trading with the Enemy Act, which, after investigation, said Alien Property Custodian shall determine is so owing, or so belongs, or is so held.

XXX. Any person who desires to make conveyance, transfer, payment, assignment or delivery, under the provisions of Section 7 (d) of the Trading with the Enemy Act, to the Alien Property Custodian of any money or other property owing to or held for, by or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy, not holding a license granted as provided in the Trading with the Enemy Act, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, shall file application with the Alien Property Custodian for consent and permit to so convey, transfer, assign, deliver or pay such money or other property to him and said Alien Property Custodian is hereby authorized to exercise the power and authority conferred upon the President by the provisions of said Section 7 (d) to consent and to issue permit upon such terms and conditions as are not inconsistent with law, or to withhold or refuse the same.

XXXI. I further vest in the Alien Property Custodian the executive administration of all the provisions of Section 8 (a), Section 8 (b), and Section 9 of the Trading with the Enemy Act, so far as said Sections relate to the powers and duties of said Alien Property Custodian.

XXXII. I vest in the Attorney General all power and authority conferred upon the President by the provisions of Section 9 of the Trading with the Enemy Act.

XXXIII. The Alien Property Custodian to be hereafter appointed is hereby authorized to take all such measures as may be necessary or expedient, and not inconsistent with law, to administer the powers hereby conferred; and he shall further have the power and authority to make such rules and regulations not inconsistent with law as may be necessary and proper to carry out the provisions of said Section 7 (a), Section 7 (c), Section 7 (d), Section 8 (a), and Section 8 (b), conferred upon the President by the provisions thereof and by the provisions of Section 5 (a), said rules and regulations to be duly approved by the Attorney General.

XXXIV. The Alien Property Custodian to be hereafter appointed

shall, "under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe," have administration of all moneys (including checks and drafts payable on demand) and of all property, other than money which shall come into his possession in pursuance of the provisions of the Trading with the Enemy Act, in accordance with the provisions of Section 6, Section 10, and Section 12 thereof.

WOODROW WILSON.

THE WHITE HOUSE,
12 October, 1917.

EXECUTIVE ORDER SUPPLEMENTAL TO EXECUTIVE ORDER OF OCTOBER
12, 1917, VESTING POWER AND AUTHORITY IN DESIGNATED OFFICERS
AND MAKING RULES AND REGULATIONS UNDER TRADING WITH THE
ENEMY ACT AND TITLE VII OF THE ACT APPROVED JUNE 15, 1917

No. 2770. December 7, 1917

By virtue of the authority vested in me by "An Act to Define, Regulate and Punish Trading with the Enemy and for Other Purposes," approved October 6, 1917, I hereby make the following orders, rules and regulations:

I. I hereby prohibit any and all foreign insurance companies from doing business within the United States after February 1, 1918, unless such companies shall first obtain from the Secretary of the Treasury licenses to do business.

II. I further hereby vest in the Secretary of the Treasury the power and authority to issue at any time, upon such terms and conditions as the Secretary of the Treasury may deem proper and as are not inconsistent with law, or to refuse, a license to any foreign insurance company to do business within the United States through agencies, branch offices or otherwise.

WOODROW WILSON.

THE WHITE HOUSE,
7 December, 1917.

EXECUTIVE ORDER FIXING SALARY OF, AND VESTING CERTAIN POWER
AND AUTHORITY IN, THE ALIEN PROPERTY CUSTODIAN APPOINTED
UNDER TRADING WITH THE ENEMY ACT

No. 2744. October 29, 1917.

By virtue of the authority vested in me by "an Act to define, regulate, and punish trading with the enemy" approved October 6, 1917, I hereby make and establish the following order:

1. I hereby fix the salary of the Alien Property Custodian heretofore appointed at the sum of \$5000 per annum. I direct that said Alien Property Custodian shall give a bond in the amount of \$100,000.00, with security to be approved by the Attorney General, and which bond shall be conditioned to well and faithfully hold, administer, and account for all money and property in the United States due or belonging to an enemy or ally of enemy, or otherwise, which may be paid, conveyed, transferred, assigned, or delivered to said Custodian under the provisions of the Trading with the Enemy Act.

2. I hereby authorize and empower the Alien Property Custodian to employ and appoint in the manner provided in the Trading with the Enemy Act in the District of Columbia and elsewhere, and to fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the powers conferred on such Alien Property Custodian by law or by any order of the President heretofore or hereafter made.

3. I hereby vest in the Alien Property Custodian the executive administration of the provisions of Section 12 of the Trading with the Enemy Act pertaining to the designation of a depository, or depositaries, and requiring all such designated depositaries to execute and file bonds and prescribing the form, amount, and security thereof. And I authorize and empower the Alien Property Custodian to designate any bank, or banks, or trust company, or trust companies, or other suitable depository or depositaries located and doing business in the United States, as the depository or depositaries with which said Alien Property Custodian may deposit any stocks, bonds, notes, time drafts, time bills of exchange, or other securities or property (except money, or cheques, or drafts payable on demand) of an enemy or ally of enemy and to prescribe the bond or bonds and the form, amount, and security thereof which shall be given by said depository or depositaries.

4. The following sums, or so much thereof as may be necessary, are hereby allotted out of the funds appropriated by the Trading with the Enemy Act to the following named officers:

To the Alien Property Custodian.....	\$100,000.00,
To the Federal Trade Commission.....	\$ 25,000.00,
To the Secretary of the Treasury.....	\$ 15,000.00,
To the War Trade Board	\$ 25,000.00,

to be expended in the administration of the powers vested respectively in them by law or by any order heretofore or hereafter made by me.

5. The powers and authority herein vested in said Alien Property Custodian are in addition to the powers and authority vested in said Alien Property Custodian by the Executive Order of October 12, 1917.

WOODROW WILSON.

THE WHITE HOUSE,
29 October, 1917.

PROCLAMATION REGARDING TREASON AND MISPRISION OF TREASON

No. 1368. April 16, 1917

WHEREAS, all persons in the United States, citizens as well as aliens, should be informed of the penalties which they will incur for any failure to bear true allegiance to the United States;

Now, therefore, I, WOODROW WILSON, President of the United States, hereby issue this proclamation to call especial attention to the following provisions of the Constitution and the laws of the United States:

Section 3 of Article III of the Constitution provides, in part:

Treason against the United States, shall consist only in levying war against them; or in adhering to their Enemies, giving them Aid and Comfort.

The Criminal Code of the United States provides:

Section 1.

Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.

Section 2.

Whoever is convicted of treason shall suffer death; or, at the discretion of the court, shall be imprisoned not less than five years and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real

and personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States.

Section 3.

Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be imprisoned not more than seven years, and fined not more than one thousand dollars.

Section 6.

If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined not more than five thousand dollars, or imprisoned not more than six years, or both.

The courts of the United States have stated the following acts to be treasonable:

The use or attempted use of any force or violence against the Government of the United States, or its military or naval forces;

The acquisition, use, or disposal of any property with knowledge that it is to be, or with intent that it shall be, of assistance to the enemy in their hostilities against the United States;

The performance of any act or the publication of statements or information which will give or supply, in any way, aid and comfort to the enemies of the United States;

The direction, aiding, counseling, or countenancing of any of the foregoing acts.

Such acts are held to be treasonable whether committed within the United States or elsewhere; whether committed by a citizen of the United States or by an alien domiciled, or residing, in the United States, inasmuch as resident aliens, as well as citizens, owe allegiance to the United States and its laws.

Any such citizen or alien who has knowledge of the commission of such acts and conceals and does not make known the facts to the officials named in Section 3 of the Penal Code is guilty of misprision of treason.

And I hereby proclaim and warn all citizens of the United States, and all aliens, owing allegiance to the Government of the United States, to abstain from committing any and all acts which would constitute a violation of any of the laws herein set forth; and I further proclaim and warn all persons who may commit such acts that they will be vigorously prosecuted therefor.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE at the City of Washington this sixteenth day of April
in the year of our Lord one thousand nine hundred and
[SEAL.] seventeen, and of the Independence of the United States
of America the one hundred and forty-first.

WOODROW WILSON.

By the President:

ROBERT LANSING,
Secretary of State.

PROCLAMATION REGARDING CONTROL OF VESSELS IN PORTS OF THE
UNITED STATES

No. 1413. December 3, 1917

WHEREAS, Under and by virtue of an Act of Congress entitled "An Act To punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes," approved by the President on the 15th day of June, 1917, it is provided among other things as follows:

Section 1. Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, the Secretary of the Treasury may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by him to go or remain on board thereof. . . .

And, WHEREAS, In a proclamation made by me on the 6th day of April, 1917, it was proclaimed that a state of war exists between the United States and the Imperial German Government,

And, WHEREAS, It is essential, in order to carry into effect the provisions of the said Act, which are quoted herein, that the powers conferred upon the President therein be at this time exercised,

Now, therefore, I, WOODROW WILSON, President of the United States of America, by virtue of the powers conferred upon me by the provisions of the said Act of Congress quoted herein, do hereby proclaim that a national emergency exists by reason of the existence of a state of war between the United States and the Imperial German Government,

And the Secretary of the Treasury is therefore hereby authorized to make rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, and to inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, to take, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by him to go or remain on board thereof.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the District of Columbia, this third day of December,
in the year of our Lord one thousand nine hundred
[SEAL.] and seventeen, and of the independence of the United
States of America, the one hundred and forty-second.

WOODROW WILSON.

By the President:

ROBERT LANSING,
Secretary of State.

EXECUTIVE ORDER REGARDING WATCH OFFICERS OF AMERICAN
VESSELS REGISTERED FOR FOREIGN TRADE

No. 2652. July 3, 1917.

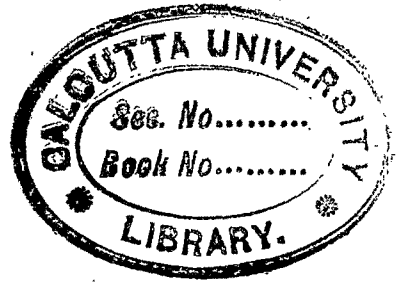
In pursuance of the authority conferred upon the President of the United States by section 2 of the Act approved August 18, 1914, entitled "An Act to provide for the admission of foreign-built ships to American registry for the foreign trade, and for other purposes," it is hereby ordered:

That the provisions of law prescribing that the watch officers of vessels of the United States registered for the foreign trade shall be citizens of the United States, are hereby suspended so far and for such length of time as is herein provided, namely —

That all citizens or subjects of nations which are or which may hereafter be engaged in the present war against the Imperial German Government or any of its allies, and all such citizens or subjects of neutral nations as shall satisfy the Secretary of Commerce that their attitude toward the purposes of the United States in the war it is now waging is not detrimental to the successful prosecution of the war, may, for the duration of the war, be permitted to act as watch officers of vessels of the United States registered for the foreign trade, if otherwise qualified: Provided, That if it shall appear to the satisfaction of the Secretary of Commerce that any such citizen or subject, whether of a belligerent or neutral nation, has committed any act inimical to the United States in the conduct of the war, the said Secretary may, in each such case, withdraw the exemption provided for herein, and such exemption shall not again apply to any such alien citizen or subject. And the Secretary of Commerce is hereby authorized to prescribe such rules and regulations as may be necessary to carry this order into effect.

WOODROW WILSON.

THE WHITE HOUSE,
3 July, 1917.



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PART FIRST

GRECO-SERBIAN TREATY OF ALLIANCE

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OFFICIAL DOCUMENTS

TREATY ARRANGEMENTS DEFINING THE INTERNATIONAL RELATIONS OF GREECE

PROTOCOL OF CONFERENCE BETWEEN GREAT BRITAIN, FRANCE, AND RUSSIA, RELATIVE TO THE INDEPENDENCE OF GREECE ¹

London, February 3, 1830

[The following clauses of this protocol were referred to in the treaty of 7th May, 1832.²]

(Translation as laid before Parliament)

Present: The plenipotentiaries of Great Britain, France, and Russia.

Independence of Greece

§ 1. Greece shall form an independent state, and shall enjoy all the rights, political, administrative, and commercial, attached to complete independence.

Form of Government

§ 3. The Greek Government shall be monarchical, and hereditary according to the order of primogeniture. It shall be confided to a prince, who shall not be capable of being chosen from among those of the families reigning in the states that signed the treaty of the 6th July, 1827,³ and who shall bear the title of Sovereign Prince of Greece. The choice of that prince shall form the object of subsequent communications and stipulations.

¹ Hertslet, *Map of Europe by Treaty*, Vol. II, p. 841; for French version, see *British and Foreign State Papers*, Vol. XVII, p. 191.

² Printed *infra*, p. 68.

³ This treaty was signed by Great Britain, France, and Russia, for the pacification of Greece as a dependency of Turkey. Hertslet, Vol. I, p. 769.

Guarantee of three Powers

§ 8. Each of the three courts shall retain the power, secured to it by Article VI of the treaty of the 6th July, 1827, of guaranteeing the whole of the foregoing arrangements and articles. The Acts of Guarantee, if there be any, shall be drawn up separately; the operation and effects of these different Acts shall become, in conformity with the above-mentioned article, the object of further stipulations on the part of the high Powers. No troops belonging to one of the contracting Powers shall be allowed to enter the territory of the new Greek state, without the consent of the two other courts who signed the treaty.

CONVENTION BETWEEN GREAT BRITAIN, FRANCE, AND RUSSIA, ON THE ONE PART, AND BAVARIA ON THE OTHER, RELATIVE TO THE SOVEREIGNTY OF GREECE.¹

Signed at London, May 7, 1832

(Translation as laid before Parliament)

The courts of Great Britain, France, and Russia, exercising the power conveyed to them by the Greek nation, to make choice of a sovereign for Greece, raised to the rank of an independent state, and being desirous of giving to that country a fresh proof of their friendly disposition by the election of a prince descended from a royal house, the friendship and alliance of which can not fail to be of essential service to Greece, and which has already acquired claims to her esteem and gratitude, have resolved to offer the crown of the new Greek state to the Prince Frederick Otho of Bavaria, second son of his Majesty the King of Bavaria.

His Majesty the King of Bavaria, on his part, acting the character of guardian of the said Prince Otho during his minority, participating in the views of the three courts, and duly appreciating the motives which have induced them to fix their choice upon a prince of his House, has determined to accept the crown of Greece for his second son, the Prince Frederick Otho of Bavaria.

¹ Hertslet, *Map of Europe by Treaty*, Vol. II, p. 893; for French version, see *State Papers*, Vol. XIX, p. 33.

In consequence of such acceptance, and for the purpose of agreeing upon the arrangements which it has rendered necessary, their Majesties the King of the United Kingdom of Great Britain and Ireland, the King of the French, and the Emperor of All the Russias, on the one part, and His Majesty the King of Bavaria on the other, have named as their plenipotentiaries, viz.:—

His Majesty the King of the United Kingdom of Great Britain and Ireland, the Right Honorable Henry John, Viscount Palmerston, Baron Temple, a Peer of Ireland, a member of His Britannic Majesty's Most Honorable Privy Council, a Member of Parliament, and his Principal Secretary of State for Foreign Affairs;

His Majesty the King of the French, the Sieur Charles Maurice de Talleyrand-Perigord, Prince-Duke de Talleyrand, Peer of France, his said Majesty's Ambassador Extraordinary and Minister Plenipotentiary to His Britannic Majesty, etc.;

His Majesty the Emperor of All the Russias, the Sieur Christopher, Prince of Lieven, General of Infantry in his Armies, his Aide-de-Camp General, Ambassador Extraordinary and Plenipotentiary to His Britannic Majesty, etc.; and the Sieur Adam, Count Matuszewie, Privy Councillor of His said Majesty, etc.;

And His Majesty the King of Bavaria, the Sieur Augustus, Baron de Cetto, his Envoy Extraordinary and Minister Plenipotentiary to His Britannic Majesty;

Who, after having exchanged their full powers, found to be in good and due form, have agreed upon and signed the following articles:

Offer of hereditary sovereignty of Greece to Prince Otho of Bavaria

Art. I. The courts of Great Britain, France, and Russia, duly authorized for this purpose by the Greek nation, offer the hereditary sovereignty of Greece to the Prince Frederick Otho of Bavaria, second son of His Majesty the King of Bavaria.

Acceptance of hereditary sovereignty by King of Bavaria

Art. II. His Majesty the King of Bavaria, acting in the name of his said son, a minor, accepts, on his behalf, the hereditary sovereignty of Greece, on the conditions hereinafter settled.

Title of King of Greece

Art. III. The Prince Otho of Bavaria shall bear the title of King of Greece.¹

Greece to form a monarchical and independent state, under the guarantee of Great Britain, France, and Russia

Art. IV. Greece, under the sovereignty of the Prince Otho of Bavaria, and under the guarantee of the three courts, shall form a monarchical and independent state, according to the terms of the protocol signed between the said courts on the 3d February, 1830, and accepted both by Greece and by the Ottoman Porte.

Limits of Greece

Art. V. The limits of the Greek state shall be such as shall be definitively settled by the negotiations which the courts of Great Britain, France, and Russia have recently opened with the Ottoman Porte, in execution of the protocol of 26th September, 1831.

King of Greece to be a contracting party to definitive treaty

Art. VI. The three courts having beforehand determined to convert the protocol of the 3d of February, 1830, into a definitive treaty, as soon as the negotiations relative to the limits of Greece shall have terminated,² and to communicate such treaty to all the states with which they have relations, it is hereby agreed that they shall fulfil this engagement, and that His Majesty the King of Greece shall become a contracting party to the treaty in question.

Three courts to obtain recognition of King Otho

Art. VII. The three courts shall, from the present moment, use their influence to procure the recognition of the Prince Otho of Bavaria as King of Greece, by all the sovereigns and states with whom they have relations.

¹ The title of the present king is "King of the Hellenes," the change of title being made by protocols of 3d August, and 13th October, 1863. Hertslet, Vol. II, pp. 1563-4.

² Arrangement of 21st July, 1832. Hertslet, Vol. II, p. 903.

Royal crown to be hereditary

Art. VIII.¹ The Royal Crown and dignity shall be hereditary in Greece; and shall pass to the direct and lawful descendants and heirs of the Prince Otho of Bavaria, in the order of primogeniture. In the event of the decease of the Prince Otho of Bavaria, without direct and lawful issue, the crown of Greece shall pass to his younger brother, and to his direct and lawful descendants and heirs, in the order of primogeniture. In the event of the decease of the last-mentioned prince also, without direct and lawful issue, the crown of Greece shall pass to his younger brother, and to his direct and lawful descendants and heirs, in the order of primogeniture.²

Crowns of Greece and Bavaria not to be united

In no case shall the crown of Greece and the crown of Bavaria be united upon the same head.

Majority of Prince Otho

Art. IX. The majority of the Prince Otho of Bavaria, as King of Greece, is fixed at the period when he shall have completed his 20th year, that is to say, on the first of June, 1835.

Regency during minority of King of Greece

Art. X. During the minority of the Prince Otho of Bavaria, King of Greece, his rights of sovereignty shall be exercised in their full extent, by a regency composed of three councillors, who shall be appointed by His Majesty the King of Bavaria.

Prince Otho to retain his appanages in Bavaria, and to be assisted by King of Bavaria

Art. XI. The Prince Otho of Bavaria shall retain the full possession of his appanages in Bavaria. His Majesty the King of Bavaria,

¹ King Otho renounced his right of succession to the throne of Bavaria on the 18th March, 1836.

² See explanatory and supplemental article, 30th April, 1833. Hertslet, Vol. II, p. 919.

moreover, engages to assist, as far as may be in his power, the Prince Otho in his position in Greece, until a revenue shall have been set apart for the crown in that state.

*Guarantee of loan by three Powers*¹

Art. XII. In execution of the stipulations of the protocol of the 20th of February, 1830, His Majesty the Emperor of All the Russias engages to guarantee, and their Majesties the King of the United Kingdom of Great Britain and Ireland, and the King of the French, engage to recommend, the former to his Parliament, and the latter to his Chambers, to enable their Majesties to guarantee, on the following conditions, a loan to be contracted by the Prince Otho of Bavaria, as King of Greece.

Extent of loan

1. The principal of the loan to be contracted under the guarantee of the three Powers shall not exceed a total amount of 60,000,000 of francs.

Loan to be raised by instalments

2. The said loan shall be raised by instalments of 20,000,000 of francs each.

Guarantee of interest and sinking fund by three Powers

3. For the present, the first instalment only shall be raised, and the three courts shall each become responsible for the payment of one-third of the annual amount of the interest and sinking fund of the said instalment.

4. The second and third instalments of the said loan may also be raised, according to the necessities of the Greek state, after previous agreement between the three courts and His Majesty the King of Greece.

5. In the event of the second and third instalments of the above-mentioned loan being raised in consequence of such an agreement, the three courts shall each become responsible for the payment of one-third of the annual amount of the interest and sinking fund of these two instalments, as well as of the first.

¹ See treaty of 29th March, 1864, *infra*, p. 79.

Payment of interest and sinking fund by Greece

6. The sovereign of Greece and the Greek state shall be bound to appropriate to the payment of the interest and sinking fund, of such instalments of the loan as may have been raised under the guarantee of the three courts, the first revenues of the state, in such manner that the actual receipts of the Greek Treasury shall be devoted, *first of all*, to the payment of the said interest and sinking fund, and shall not be employed for any other purpose until those payments on account of the instalments of the loan raised under the guarantee of the three courts shall have been completely secured for the current year.

*Representatives of three courts to watch over fulfilment of
engagement by Greece*

The diplomatic representatives of the three courts in Greece shall be specially charged to watch over the fulfilment of the last-mentioned stipulation.

Pecuniary compensation to Turkey to be paid out of proceeds of loan

Art. XIII. In case a pecuniary compensation in favor of the Ottoman Porte should result from the negotiations which the three courts have already opened at Constantinople for the definitive settlement of the limits of Greece, it is understood that the amount of such compensation shall be defrayed out of the proceeds of the loan which forms the subject of the preceding article.

*Bavarian troops to be raised for King of Greece. Evacuation of
Greece by Allied troops*

Art. XIV. His Majesty the King of Bavaria shall lend his assistance to the Prince Otho in raising in Bavaria a body of troops, not exceeding 3,500 men, to be employed in his service, as King of Greece, which corps shall be armed, equipped, and paid by the Greek state, to be sent thither as soon as possible, in order to relieve the troops of the Alliance hitherto stationed in Greece. The latter shall remain in that country entirely at the disposal of the Government of His Majesty the King of Greece, until the arrival of the body of troops above mentioned. Immediately upon their arrival the troops of the Alliance already referred to shall retire, and altogether evacuate the Greek territory.

Bavarian officers to organize a national military force

Art. XV. His Majesty the King of Bavaria shall also assist the Prince Otho in obtaining the services of a certain number of Bavarian officers, who shall organize a national military force in Greece.

Regency to proceed to Greece without delay

Art. XVI. As soon as possible after the signature of the present convention, the three councillors who are to be associated with His Royal Highness the Prince Otho by His Majesty the King of Bavaria, in order to compose the Regency of Greece, shall repair to Greece, shall enter upon the exercise of the functions of the said Regency, and shall prepare all the measures necessary for the reception of the sovereign, who, on his part, will repair to Greece with as little delay as possible.

Declaration of three courts to Greek nation

Art. XVII. The three courts shall announce to the Greek nation, by a joint declaration, the choice which they have made of His Royal Highness Prince Otho of Bavaria, as King of Greece, and shall afford the Regency all the support in their power.

Ratifications

Art. XVIII. The present convention shall be ratified, and the ratifications shall be exchanged at London in six weeks, or sooner, if possible.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at London, the 7th May, in the year of our Lord, 1832.

(L. S.) PALMERSTON.

(L. S.) TALLEYRAND.

(L. S.) LIEVEN.

• (L. S.) MATUSZEWIC.

(L. S.) A. DE CETTO.

[An Act was passed by the German Diet, 4th October, 1832, recognizing Prince Otho as King of Greece.]

[An Act of Parliament was passed on the 16th August, 1832 (2 and 3 Will. IV, cap. 121), to enable His Majesty to carry out the above convention.]

TREATY BETWEEN GREAT BRITAIN, FRANCE, AND RUSSIA, ON THE ONE PART, AND DENMARK, ON THE OTHER PART, RELATIVE TO THE ACCESSION OF PRINCE WILLIAM OF DENMARK TO THE THRONE OF GREECE.¹

Signed at London, 13th July, 1863; ratifications exchanged at London, 3d August, 1863

(Translation as laid before Parliament)

Reference to guarantee of Great Britain, France, and Russia

In the name of the Most Holy and Indivisible Trinity

Their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of the French, and the Emperor of All the Russias, being anxious to smooth the difficulties which have occurred in the Kingdom of Greece, placed under their common guarantee, have judged it necessary to come to an understanding with regard to the arrangements to be taken in order to give effect to the wish of the Greek nation, which calls the Prince William of Denmark to the Hellenic throne.

His Majesty the King of Denmark, on his part, responding to the invitation of their said Majesties, has consented to afford them his coöperation with a view to that result, conformable to the interests of the general peace.

In consequence, their Majesties the Queen of the United Kingdom of Great Britain and Ireland, the Emperor of the French, and the Emperor of All the Russias, on the one part, and His Majesty the King of Denmark on the other, have resolved to conclude a treaty, and have for that purpose named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable John Earl Russell, her Principal Secretary of State for Foreign Affairs, etc.,

His Majesty the Emperor of the French, the Sieur John Baptist Louis Baron Gros, Ambassador Extraordinary and Plenipotentiary to Her Britannic Majesty, etc.;

His Majesty the Emperor of All the Russias, the Sieur Philip Baron de Brunnow, his actual Privy Councillor, Ambassador Extraordinary and Plenipotentiary to Her Britannic Majesty, etc.;

¹ Hertslet, *Map of Europe by Treaty*, Vol. II, p. 1545; for French version, see *State Papers*, Vol. LIII, p. 28.

And His Majesty the King of Denmark, the Sieur Torben de Bille, his Chamberlain, his Envoy Extraordinary and Minister Plenipotentiary to Her Britannic Majesty, etc.;

Who, after having exchanged their full powers, found in good and due form, have agreed upon and signed the following articles:

*Acceptance of hereditary sovereignty of Greece by King of Denmark
for Prince William of Denmark*

Art. I. His Majesty the King of Denmark, in accordance with the Prince Christian of Denmark, acting in the character of guardian of his second son the Prince Christian William Ferdinand Adolphus George, accepts for that prince, a minor, the hereditary sovereignty of Greece, which is offered to him by the Senate and the National Assembly of Greece in the name of the Hellenic nation.

Title of King of the Greeks

Art. II. The Prince William of Denmark shall bear the title of George I, King of the Greeks (*Roi des Grecs*).¹

Greece to form a monarchical, independent, and constitutional state

Art. III. Greece, under the sovereignty of Prince William of Denmark, and the guarantee of the three courts, forms a monarchical, independent, and constitutional state.

Limits of Greek Territory. Annexation of Ionian Islands to Greece

Art. IV. The limits of the Greek Territory, determined by the arrangement concluded at Constantinople between the three courts and the Ottoman Porte, on the 21st July, 1832,² shall receive an extension by the union of the Ionian Islands with the Hellenic Kingdom, when such union, proposed by the Government of her Britannic Majesty, shall have been found to be in accordance with the wishes of the Ionian Parliament, and shall have obtained the assent of the courts of Austria, France, Prussia, and Russia.³

¹ See note ¹, p. 70, *supra*.

² Hertslet, Vol. II, p. 903.

³ Decree 18/30th March, 1863, annexed to Protocol of 5th June, 1863. Hertslet, Vol. II, p. 1539.

Union of Ionian Islands to be under guarantee of protecting Powers

Art. V. The Ionian Islands, when their union with the Kingdom of Greece shall have been effected, shall be comprised in the guarantee stipulated by Article III of the present treaty.

Crowns of Greece and Denmark never to be united

Art. VI. In no case shall the crown of Greece and the crown of Denmark be united on the same head.

Religion of King of Greece

Art. VII. In conformity with the principle of the Hellenic Constitution recognized by the treaty signed at London, on the 20th November, 1852,¹ and proclaimed by the decree of the National Assembly of Greece, of the 30th March, 1863 the legitimate successors of King George I must profess the tenets of the Orthodox Church of the East.

Majority of King of Greece

Art. VIII. The majority of Prince William of Denmark, fixed by the law of the royal family at 18 years complete, that is to say, on the 24th December, 1863, shall be considered as attained before that date, if a decree of the National Assembly should recognize the necessity thereof.

Appropriation by Ionian Islands to civil list of King of the Greeks

Art. IX. At the moment when the union of the Ionian Islands with the Hellenic Kingdom shall take place, according to the terms of Article IV of the present treaty, Her Britannic Majesty will recommend to the Government of the United States of the Ionian Islands to appropriate annually a sum of £10,000 sterling to augment the civil list of His Majesty George I, King of the Greeks (*Roi des Grecs*).

o

Personal dotation to King of the Greeks by protecting Powers

Art. X. Each of the three courts will give up in favor of Prince William of Denmark £4,000 a year out of the sums which the Greek

¹ Hertslet, Vol. II, p. 1156.

Treasury has engaged to pay annually to each of them, in pursuance of the arrangement concluded at Athens by the Greek Government, with the concurrence of the Chambers, in the month of June, 1860.¹

It is expressly understood that these three sums, forming a total of £12,000 sterling annually, shall be destined to constitute a personal dotation of His Majesty the King, in addition to the civil list fixed by the law of the state.

Financial engagements of Greece to be maintained. Greek loan

Art. XI. The accession of Prince William to the Hellenic throne shall not involve any change in the financial engagements which Greece has contracted by Article XII of the convention signed at London, on the 7th May, 1832, towards the Powers guaranties of the loan.

It is equally understood that the Powers will, in concert, watch over the execution of the engagement taken by the Hellenic Government in the month of June, 1860, upon the representation of the three courts.

Recognition of Prince William of Denmark by foreign Powers

Art. XII. The three courts shall, from this moment, use their influence in order to procure the recognition of Prince William of Denmark in the character of King of the Greeks (*Roi des Grecs*), by all the sovereigns and states with whom they have relations.

Arrival of King George I in Greece

Art. XIII. His Majesty the King of Denmark reserves to himself to take the measures which may be most proper for facilitating the arrival of King George I in his dominions as soon as possible.

Support to Greek Government

Art. XIV. The three courts will bring the present treaty to the knowledge of the Greek Government, and will afford to that government all the support in their power, while awaiting the speedy arrival of His Majesty the King.

¹ Hertslet, Vol. II, p. 1445.

Ratifications

Art. XV. The present treaty shall be ratified, and the ratifications shall be exchanged at London in six weeks, or sooner, if possible.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at London, the 13th day of July, in the year of Our Lord, 1863.

(L. S.) RUSSELL.

(L. S.) BILLE.

(L. S.) BON. GROS.

(L. S.) BRUNNOW.

TREATY BETWEEN GREAT BRITAIN, FRANCE, RUSSIA, AND GREECE,
RESPECTING THE UNION OF THE IONIAN ISLANDS TO THE KINGDOM
OF GREECE.¹

*Signed at London, 29th March, 1864; ratifications exchanged at London,
25th April, 1864*²

(Translation as laid before Parliament)

Reference to Treaty of 5th November, 1815

In the name of the Most Holy and Indivisible Trinity

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland made known to the Legislative Assembly of the United States of the Ionian Islands that, with a view to the eventual union of those Islands to the Kingdom of Greece, she was prepared, if the Ionian Parliament should express a wish to that effect, to abandon the protectorate of those Islands, confided to Her Majesty by the treaty concluded at Paris on the 5th November, 1815,³ between the courts of Great Britain, Austria, Prussia, and Russia. Such wish having been expressed by a vote of the said Legislative Assembly passed unanimously on the 7/19th October, 1863,⁴ Her Britannic Majesty consented by Article I of the treaty concluded on the 14th November, 1863,⁵

¹ Hertslet, *Map of Europe by Treaty*, Vol. III, p. 1589.

² The Sultan acceded to this treaty on the 8th April, 1865.

³ Hertslet, Vol. I, p. 337. ⁴ *Ibid.*, Vol. II, p. 1565. ⁵ *Ibid.*, Vol. II, p. 1569.

between Her Majesty, the Emperor of Austria, the Emperor of the French, the King of Prussia, and the Emperor of All the Russias, to renounce the said protectorate under certain conditions specified in that treaty, and since defined by subsequent protocols.

On their part, their Majesties the Emperor of Austria, the Emperor of the French, the King of Prussia, and the Emperor of All the Russias, consented by the same article, and under the same conditions, to accept such renunciation, and to recognize, in conjunction with Her Britannic Majesty, the union of those Islands to the Kingdom of Greece.

In virtue of Article V of the treaty signed at London on the 13th July, 1863, it was moreover agreed by common consent between Her Britannic Majesty and their Majesties the Emperor of the French and the Emperor of All the Russias, that the Ionian Islands, when their union to the Kingdom of Greece should have been effected, as contemplated by Article IV of the same treaty, should be comprised in the guarantee stipulated in favor of Greece by the courts of Great Britain, France, and Russia, in virtue of the convention signed at London on the 7th May, 1832.

In consequence, and in accordance with the stipulations of the treaty of the 13th July, 1863, and with the terms of Article VI of the treaty of the 14th November, 1863, whereby the courts of Great Britain, France, and Russia, in their character of guaranteeing Powers of the Kingdom of Greece, reserved to themselves to conclude a treaty with the Hellenic Government as to the arrangements which might become necessary in consequence of the union of the Ionian Islands to Greece, their said Majesties have resolved to proceed to negotiate with His Majesty the King of the Hellenes a treaty for the purpose of carrying into execution the stipulations above mentioned.

His Majesty the King of the Hellenes having given his assent to the conclusion of such treaty, their said Majesties have named as their plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honorable John Earl Russell, Viscount Amberley of Amberley and Ardsalle, a Peer of the United Kingdom, a member of Her Britannic Majesty's Privy Council, her Principal Secretary of State for Foreign Affairs;

His Majesty the Emperor of the French, the Sieur Godefroy Bernard Henry Alphonse, Prince de la Tour d'Auvergne Lauraguais, Ambassador Extraordinary and Plenipotentiary to Her Britannic Majesty, etc.;

His Majesty the Emperor of All the Russias, the Sieur Philip Baron de Brunnow, his Actual Privy Councillor, Ambassador Extraordinary and Plenipotentiary to Her Britannic Majesty, etc.;

And His Majesty the King of the Hellenes, the Sieur Charilatis S. Tricoupi, a representative in the National Assembly of the Hellenes;

Who, after having exchanged their full powers, found in good and due form, have agreed upon and signed the following articles:

Renunciation of Great Britain to protectorate over the Ionian Islands

Art. I. Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, desiring to realize the wish expressed by the Legislative Assembly of the United States of the Ionian Islands, that those Islands should be united to Greece, has consented, on the conditions hereinafter specified, to renounce the protectorate over the Islands of Corfu, Cephalonia, Zante, Santa Maura, Ithaca, Cerigo, and Paxo, with their dependencies, which, in virtue of the treaty signed at Paris, on the 5th November, 1815, by the plenipotentiaries of Great Britain, Austria, Prussia, and Russia, were constituted a single free and independent state, under the denomination of "the United States of the Ionian Islands," placed under the immediate and exclusive protection of His Majesty the King of the United Kingdom of Great Britain and Ireland, his heirs and successors.

Union of Ionian Islands to Greece

In consequence, Her Britannic Majesty, His Majesty the Emperor of the French, and His Majesty the Emperor of All the Russias, in their character of signing parties to the convention of the 7th May, 1832, recognize such union, and declare that Greece, within the limits determined by the arrangement concluded at Constantinople between the courts of Great Britain, France, and Russia, and the Ottoman Porte, on the 21st July, 1832, including the Ionian Islands, shall form a monarchical, independent, and constitutional state, under the sovereignty of His Majesty King George, and under the guarantee of the three courts.

*Perpetual neutrality of Ionian Islands*¹

Art. II. The courts of Great Britain, France, and Russia, in their character of guaranteeing Powers of Greece, declare, with the assent of the courts of Austria and Prussia, that the Islands of Corfu and Paxo, as well as their dependencies, shall, after their union to the Hellenic Kingdom, enjoy the advantages of perpetual neutrality.

Greece to maintain the neutrality

His Majesty the King of the Hellenes, on his part, to maintain such neutrality.

Treaties, etc., of commerce and navigation between Great Britain and foreign Powers relative to Ionian Islands to remain in force until conclusion of new treaty.

Art. III. The union of the Ionian Islands to the Hellenic Kingdom shall not involve any change as to the advantages conceded to foreign commerce and navigation in virtue of treaties and conventions concluded by foreign Powers with Her Britannic Majesty, in her character of protector of the Ionian Islands.

All the engagements which result from the said transactions, as well as from the regulations actually in force in relation thereto, shall be maintained and strictly observed, as hitherto.

In consequence, it is expressly understood that foreign vessels and commerce in Ionian ports, as well as the navigation between Ionian ports and the ports of Greece, shall continue to be subject to the same treatment, and placed under the same conditions as before the union of the Ionian Islands to Greece, until the conclusion of new formal conventions, or of arrangements destined to regulate between the parties concerned, questions of commerce and navigation, as well as questions relating to the regular service of communication by post.

Terms within which new commercial treaties are to be concluded

Such new conventions shall be concluded in fifteen years, or sooner, if possible.²

¹ A protocol on this subject was also signed between the five Powers on the 25th January, 1864.

² The Austrian and Prussian Governments assented to this arrangement.

Freedom of worship and religious toleration

Art. IV. The union of the United States of the Ionian Islands to the Kingdom of Greece shall in no wise invalidate the principles established by the existing legislation of those Islands with regard to freedom of worship and religious toleration; accordingly the rights and immunities established in matters of religion by Chapters I and V of the Constitutional Charter of the United States of the Ionian Islands,¹ and specifically the recognition of the Orthodox Greek Church as the dominant religion in those Islands; the entire liberty of worship granted to the established Church of the protecting Power; and the perfect toleration promised to other Christian communions shall, after the union, be maintained in their full force and effect.

The special protection guaranteed to the Roman Catholic Church, as well as the advantages of which that church is actually in possession, shall be equally maintained; and the subjects belonging to that communion shall enjoy in the Ionian Islands the same freedom of worship which is recognized in their favor by the protocol of the 3d February, 1830.

The principle of entire civil and political equality between subjects belonging to different creeds, established in Greece by the same protocol, shall be likewise in force in the Ionian Islands.

Provision of Ionian Islands towards the civil list of the King of the Hellenes

Art. V. The Legislative Assembly of the United States of the Ionian Islands has decreed by a resolution passed on the 7/19th October, 1863, that the sum of £10,000 sterling a year shall be appropriated, in monthly payments, to the augmentation of the civil list of His Majesty the King of the Hellenes, so as to constitute the first charge upon the revenue of the Ionian Islands, unless provision be made for such payment, according to the constitutional forms, out of the revenues of the Kingdom of Greece.

In consequence, His Majesty the King of the Hellenes engages to carry that decree duly into execution.

¹ Ratified by the Sovereign of Great Britain on the 26th August, 1817.

Relinquishment by protecting Powers of portion of the annual sums to be paid to them by Greece

Art. VI. Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the Emperor of the French, and His Majesty the Emperor of All the Russias, agree to relinquish in favor of His Majesty King George I, each £4,000 sterling a year, out of the sums which the Greek Treasury has engaged to pay annually to each of them, in virtue of the arrangement concluded at Athens by the Greek Government, with the concurrence of the Greek Chambers, in the month of June, 1860 (No. 318).

Amounts relinquished to form personal dotation of King of Greece

It is expressly understood that these three sums, forming a total of £12,000 sterling annually, shall be destined to constitute a personal dotation of His Majesty King George I, in addition to the civil list fixed by the law of the state. The accession of His Majesty to the Hellenic throne shall not otherwise involve any change in the financial engagements which Greece has contracted by Article XII of the convention of 7th May, 1832, towards the Powers guarantees of the loan, nor in the execution of the engagement taken by the Hellenic Government in the month of June, 1860, upon the representation of the three courts.¹

Contracts between Ionian Islands and foreign Powers to be maintained by King of the Hellenes

Art. VII. His Majesty the King of the Hellenes engages to take upon himself all the engagements and contracts lawfully concluded by the Government of the United States of the Ionian Islands, or in their name, by the protecting Power of those Islands, conformably to the Constitution of the Ionian Islands, whether with foreign governments, with companies and associations, or with private individuals; and promises to fulfil the said engagements and contracts fully and completely, as if they had been concluded by His Majesty or by the Hellenic Government. Under this head are specially included: the public debt of the Ionian Islands; the privileges conceded to the Ionian Bank, to the navigation company known under the name of the

¹ An Act of Parliament was passed on the 14th July, 1864 (27th and 28 Vict., cap. 40), to give effect to this arrangement.

Austrian Lloyds, in conformity with the postal convention of the 1st December, 1853, and to the Malta and Mediterranean Gas Company.

Pensions, etc., to British and Ionian subjects to be paid by Greece

Art. VIII. His Majesty the King of the Hellenes promises to take upon himself, —

1. The pensions granted to British subjects by the Ionian Government, in conformity with the rules established in the Ionian Islands respecting pensions.

2. The compensation allowances due to certain individuals actually in the service of the Ionian Government, who will lose their employments in consequence of the union of the Islands to Greece.

3. The pensions which several Ionian subjects are in the enjoyment of, in remuneration of services rendered to the Ionian Government.

Special convention to regulate amounts

A special convention to be concluded between Her Britannic Majesty and His Majesty the King of the Hellenes shall determine the amounts of these different heads, and shall regulate the mode of their payment.¹

Withdrawal of British forces from the Ionian Islands

Art. IX. The civil authorities and the military forces of her Britannic Majesty shall be withdrawn from the territory of the United States of the Ionian Islands in three months or sooner, if possible, after the ratification of the present treaty.²

Ratifications

Art. X. The present treaty shall be ratified and the ratifications shall be exchanged at London in six weeks, or sooner, if possible.

In witness whereof the respective plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at London, the 29th of March, in the year of Our Lord, 1864.

(L. S.) RUSSELL.

(L. S.) CH. TRICOUPÍ.

(L. S.) LA TOUR D'AUVERGNE.

(L. S.) BRUNNOW.

¹ Convention of same date. Hertslet, Vol. III, p. 1596.

² See protocol of 28th May, 1864. Hertslet, Vol. III, p. 1606.

DIPLOMATIC DOCUMENTS, 1913-1917, ISSUED BY THE
GREEK GOVERNMENT CONCERNING THE GRECO-
SERBIAN TREATY OF ALLIANCE AND THE GERMANO-
BULGARIAN INVASION IN MACEDONIA.¹

PART FIRST

THE GRECO-SERBIAN TREATY OF ALLIANCE

I. TEXTS

No. 1

PROTOCOL CONCERNING THE CONCLUSION OF A TREATY OF ALLIANCE
BETWEEN GREECE AND SERBIA

Signed, April 22/May 5, 1913.

His Excellency Mr. Lambros A. Coromilas, Minister for Foreign Affairs of Greece, and His Excellency Mr. Mathias Boschkovitch, Minister of Serbia in Athens, acting on behalf of their governments and in accordance with their instructions, held a conference today and agreed as follows:

1

The Governments of Greece and Serbia bind themselves to conclude and sign a treaty of amity and of defensive alliance within the period of twenty days from the signature of the present instrument.

¹ These documents, together with the preceding list of papers in the Table of Contents, cited as the Greek White Book, translated from the Greek and French, by Mr. Theodore P. Ion, of the Bars of New York and the District of Columbia.

The documents contained in the present book were laid before the Hellenic Chamber at the meeting of August 4/17, 1917.

The words in brackets take the place of illegible words of the texts of the telegrams. Wherever it has been impossible to complete the meaning the statement [words illegible] has been inserted.

The dates indicated in the body of the documents are those of the Julian calendar. — TRANSLATOR.

2

It will be covenanted in that treaty that the two governments will give mutual aid to each other in order that Greece and Serbia may have contiguous boundaries to the west of the Axios (Vardar) river and that the fixing of the new boundaries shall be done in principle on the basis of effective possession.

The general direction of this boundary shall be as follows:

Starting from the mountain range of Kamena Planina (Kamna) which delimits the high Schkoumbi to the southwest side of the Ochrida Lake, the boundary line will pass round this lake to the south; it will reach the western shore of the Prespa Lake to the Kousko village, and passing through the lake it will reach Dolni Dupliani on the eastern shore; from there it will pass in the direction of the east near Rahmanli, will follow the line of the separation of the waters between the Erigon (Tserna) river and the Moglenica and will reach the Axios (Vardar) river at about three kilometers to the south of Ghevgheli.

The Greco-Bulgarian as well as the Serbo-Bulgarian boundary lines shall be fixed on the basis of the principle of effective possession and the equilibrium between the three states.

The Serbian boundary line to the north of Ghevgheli will follow the Axios (Vardar) river as far as the confluence of the Bregalnitzar river, which it will ascend to a point of the old Turkish-Bulgarian boundary.

The Greco-Serbian boundary line will run to the south of Kilkitch, to the north of Nigrita, through Orliako, and from there, by the Achinos (Tachinos) lake and the Angitis (Anghista) river, will descend to the sea a little further to the east of the harbor of Eleutherai.

All these boundary lines will be fixed in a more detailed manner and will be inserted in the text of the aforesaid treaty of alliance.

3

The Governments of Greece and Serbia bind themselves to proceed together, to afford to each other constant assistance in the negotiations which will be opened in regard to the division of the territories ceded by Turkey, and to mutually support the boundary lines indicated above, between Greece and Serbia, Greece and Bulgaria, Serbia and Bulgaria.

4

Should a dissension arise with Bulgaria in regard to the boundaries above indicated and a friendly settlement become impossible, the Governments of Greece and Serbia reserve to themselves the right to propose jointly to Bulgaria that the dispute be submitted to mediation or arbitration. In case Bulgaria should refuse to accept this manner of peaceful settlement and assume a menacing attitude or attempt to impose her claims by force, the two governments, in order to secure the integrity of their possessions, bind themselves to afford to each other military assistance and not to conclude peace except jointly and together.

5

A military convention shall be concluded with the least possible delay for the purpose of preparing and insuring the necessary defensive measures in case one of the two states, without provocation on its part, should be attacked by a third Power.

6

7

The Greek Government binds itself to afford all the facilities and to guarantee for fifty years the entire freedom of the Serbian export and import trade through the port of Salonika and the railway lines from Salonika to Uskup and Monastir.

8

The present instrument shall be kept strictly secret.

Done in duplicate, Athens, the twenty-second day of April in the year one thousand, nine hundred and thirteen.

*The Minister of Foreign Affairs
of Greece.*

L. A. COROMILAS.

*The Minister of
Serbia.*

M. BOSCHKOVITCH.

No. 2

TREATY OF ALLIANCE BETWEEN THE KINGDOM OF GREECE AND THE
KINGDOM OF SERBIA

*Signed, May 19/June 1, 1913; ratifications exchanged at Athens,
June 8/21, 1913.*

His Majesty the King of the Hellenes and His Majesty the King of Serbia, considering that it is their duty to look after the security of their people and the tranquillity of their kingdoms; considering furthermore, in their firm desire to preserve a durable peace in the Balkan Peninsula, that the most effective means to attain it is to be united by a close defensive alliance;

Have resolved to conclude an alliance of peace, of friendship, and of mutual protection, promising to each other never to give to their purely defensive agreement an offensive character, and for that purpose they have appointed as their plenipotentiaries:

His Majesty the King of the Hellenes; Mr. John Alexandropoulos, his Minister at Belgrade, Commander of the Royal Order of the Savior, Grand Commander of the Royal Order of Takovo; His Majesty the King of Serbia; Mr. Mathias Boschkovitch, his Minister at Athens, Grand Commander of the Royal Order of Saint Sava, Commander of the Royal Order of the Savior, who, after having exchanged their full powers found in good and due form, have today agreed as follows:

ARTICLE 1

The two high contracting parties covenant expressly the mutual guarantee of their possessions and bind themselves, in case, contrary to their hopes, one of the two kingdoms should be attacked without any provocation on its part, to afford to each other assistance with all their armed forces and not to conclude peace subsequently except jointly and together.

ARTICLE 2

At the division of the territories of European Turkey, which will be ceded to the Balkan States after the termination of the present war by the treaty of peace with the Ottoman Empire, the two high contracting parties bind themselves not to come to any separate under-

standing with Bulgaria, to afford each other constant assistance, and to proceed always together, upholding mutually their territorial claims and the boundary lines hereafter to be indicated.

ARTICLE 3

The two high contracting parties, considering that it is to the vital interest of their kingdoms that no other state should interpose between their respective possessions to the west of the Axios (Vardar) river, declare that they will mutually assist one another in order that Greece and Serbia may have a common boundary line. This boundary line, based on the principle of effective occupation, shall start from the highest summit of the mountain range of Kamna, delimiting the basin of the Upper Schkoumbi, it shall pass round the lake Achris (Ochrida), shall reach the western shore of the Prespa lake in the Kousko village and the eastern shore to the Lower Dupliani (Dolni Dupliani), shall run near Rahmanli, shall follow the line of separation of the waters between the Erigon (Tserna) river and Moglenica and shall reach the Axios (Vardar) river at a distance of nearly three kilometers to the south of Ghevgheli, according to the line drawn in detail in Annex I of the present treaty.

ARTICLE 4

The two high contracting parties agree that the Greco-Bulgarian and Serbo-Bulgarian boundary lines shall be established on the principle of actual possession and the equilibrium between the three states, as follows:

The eastern frontier of Serbia from Ghevgheli shall follow the course of the Axios (Vardar) river up to the confluence of Bojimia-Dere, shall ascend that river, and, passing by the altitudes 120, 350, 754, 895, 571, and the rivers Kriva, Lakavitzza, Bregalnica and Zletovska shall proceed towards a point of the old Turkish-Bulgarian frontier on the Osogovska Planina, altitude 2225, according to the line drawn in detail in the Annex II of the present treaty.

The Greek frontier on the side of Bulgaria shall leave to Greece on the left shore of Axios (Vardar) the territories occupied by the Greek and Serbian troops opposite Ghevgheli and Davidovo as far as the mountain Beles and the Doiran lake; then, passing to the south of Kil-kitch it shall run through the Strymon river by the north of the Orliako

bridge and shall proceed through the Achinos (Tachinos) lake and the Angitis (Anghista) river to the sea, a little to the east of the Gulf of Eleutherai according to the line drawn in detail in the Annex III of the present treaty.

ARTICLE 5

Should a dissension arise with Bulgaria in regard to the frontiers as indicated above, and if every friendly settlement becomes impossible, the two high contracting parties reserve to themselves the right to propose by common agreement, to Bulgaria, that the dispute be submitted to the mediation or arbitration of the sovereigns of the Entente Powers or the chiefs of other states. In case Bulgaria shall refuse to accept this manner of peaceful settlement and assume a menacing attitude against either of the two kingdoms, or attempt to impose her claims by force, the two high contracting parties bind themselves solemnly to afford assistance to each other with all their armed forces and not to conclude peace subsequently except jointly and together.

ARTICLE 6

In order to prepare and to secure the means of military defense, a military convention shall be concluded with the least possible delay from the signature of the present treaty.

ARTICLE 7

His Majesty the King of the Hellenes covenants that his government shall grant all the necessary facilities and guarantees for a period of fifty years for the complete freedom of the export and import trade of Serbia through the port of Salonika and the railway lines from Salonika to Uskup and Monastir. This freedom shall be as large as possible, provided only it is compatible with the full and entire exercise of the Hellenic sovereignty.

A special convention shall be concluded between the two high contracting parties within one year from this day in order to regulate in detail the carrying out of this article.

ARTICLE 8

The two high contracting parties agree that upon the final settlement of all the questions resulting from the present war, the General Staffs of

the two armies shall come to an understanding with the view of regulating in a parallel manner the increase of the military forces of each state.

ARTICLE 9

The two high contracting parties agree furthermore that, upon the final settlement of all the questions resulting from the present war, they will proceed by common agreement to the study of a plan of a custom convention, in order to draw closer the commercial and economic relations of the two countries.

ARTICLE 10

The present treaty shall be put in force after its signature. It can not be denounced before the expiration of ten years. The intention for the cessation of its force shall be notified by one of the two high contracting parties to the other six months in advance, in the absence of which the agreement shall continue to be binding upon the two states until the expiration of one year from the date of the denunciation.

ARTICLE 11

The present treaty shall be kept strictly secret. It can not be communicated to another Power either totally or partially, except with the consent of the two high contracting parties.

It shall be ratified as soon as possible. The ratifications shall be exchanged in Athens.

In faith whereof the respective plenipotentiaries have signed this treaty and affixed their seals.

Executed in Salonika, in duplicate, the nineteenth day of May in the year one thousand nine hundred and thirteen.

JOHN ALEXANDROPOULOS.

M. BOSCHKOVITCH.

No. 3

MILITARY CONVENTION BETWEEN THE KINGDOM OF GREECE AND THE
KINGDOM OF SERBIA

Signed, May 1/14, 1913.¹

His Majesty the King of the Hellenes and His Majesty the King of Serbia, desiring to complete the treaty of alliance concluded between the Kingdom of Greece and the Kingdom of Serbia, by a military convention, have appointed for that purpose as their plenipotentiaries:

His Majesty the King of the Hellenes, Captain John Metaxas, of the Corps of Engineers and of the General Staff of the Army; His Majesty the King of Serbia, Colonel Petar Pechitch of the General Staff, and Colonel Douchan Toufegdjitch, of the Infantry, who, after having communicated to each other their full powers found in good and due form, have agreed as follows:

ARTICLE 1

In case of war between Greece and Bulgaria or between Serbia and Bulgaria, or in case of a sudden attack by the Bulgarian army against the Greek or the Serbian army, the two states, namely Greece and Serbia, promise to each other mutual military assistance, Greece with all her land and sea forces, and Serbia with all her land forces.

ARTICLE 2

In the beginning of the hostilities, at whatever moment they begin, Greece is bound to have an army of ninety thousand fighting men concentrated in the region between the Pangaion Mountain, Salonika and Goumenitsa, and Serbia an army of one hundred and fifty thousand fighting men concentrated in the region of Ghevgheli, Veless (Kioprulu), Koumanovo, Pirot. Besides, Greece is at the same time bound to have her fleet in the Ægean Sea ready for action.

¹ The present military convention was signed at referendum, but was not ratified. It was replaced by the military convention of May 19/June 1, 1913, printed *infra*, p. 96.

ARTICLE 3

The two states are bound to transport to the zone of operations the remainder of their military forces, as soon as these shall become available.

ARTICLE 4

A decrease of the forces mentioned in Article 2, either by demobilization or the transportation of troops elsewhere, is not permitted, unless there is a written agreement to that effect between the General Staffs of the armies of the two allied states.

ARTICLE 5

The military operations against Bulgaria shall be based upon a common plan of operations. This plan of operations will be drawn up by the respective General Staffs of the two states, or by their delegates. It may subsequently be modified in consequence of a change of the military situation by a common agreement in writing of the two General Staffs.

ARTICLE 6

After the opening of hostilities, whatever the course of the military operations might be and whatever the localities through which, during the military operations, the troops of the one or the other allied states may pass, and whatever the cities, villages or positions which may be occupied by these troops for military necessities, the occupation of the country lying beyond the boundary line between Greece and Serbia on one part and Bulgaria on the other, as provided for by the Greco-Serbian Treaty of Alliance, of which the present convention is a complement, is regulated as follows:

The Greek army has the right to occupy the country situated to the south and southeast of the line of Gradec, the crest line of the Beles Mountain, a summit 1800 to the northwest of Karakioi, — altitude 2194 Perelik; the Serbian army, the country lying to the north and northwest of the said line.

If during the military operations one of the two armies shall occupy part of the country, cities, or villages situated in the zone which should be occupied by the other army, it shall evacuate them as soon as the army which, according to the previous paragraph, has the right to their occupation, demands it.

ARTICLE 7

The ultimate object of the military operations of the allied Greek and Serbian armies being the destruction of the military forces of Bulgaria, if one of the two armies can not attain that object in its own theatre of operations, it is bound to accept the assistance of the other army in the same theatre of operations. Still, the army which attains that object in its own theatre of operations is bound to go to the assistance of the other, independently of the fact that this assistance was asked or not, in order that by a common action of the two allied armies, Bulgaria may be forced to submit to the conditions laid down by the two allied states and to conclude peace.

ARTICLE 8

Neither of the two allied armies can conclude an armistice of a duration of more than twenty-four hours nor tacitly suspend hostilities.

An armistice of a duration of more than twenty-four hours can not be concluded except upon a joint agreement in writing of the two allied states; this agreement shall at the same time determine the conditions of the armistice.

ARTICLE 9

The present convention shall be valid as long as the treaty of alliance between Greece and Serbia, of which it forms a complement, remains in force.

Article 2 of the present convention may be modified by a joint agreement in writing of the General Staffs of the two respective states, after the passing of the present crisis and the issuance of the order of demobilization.

ARTICLE 10

The present convention shall come into force from the day of its ratification by their Majesties the King of the Hellenes and the King of Serbia, or by the respective governments of the allied states.

In faith thereof, the plenipotentiaries have signed the present convention.

Done in duplicate, in Salonika, the first day of May in the year 1913.

For Greece:

Captain J. P. METAXAS.

For Serbia:

Colonel PETAR PECHITCH.

Colonel DOUCHAN TOUFEGDJITCH.

No. 4

MILITARY CONVENTION BETWEEN THE KINGDOM OF GREECE AND
THE KINGDOM OF SERBIA

*Signed, May 19/June 1, 1913; ratifications exchanged at Athens,
June 8/21, 1913.*

His Majesty the King of the Hellenes and His Majesty the King of Serbia, desiring to complete the treaty of alliance concluded between the Kingdom of Greece and the Kingdom of Serbia, by a military convention, have appointed for that purpose as their plenipotentiaries:

His Majesty the King of the Hellenes, Captain Xenophon Stratigos, of the Corps of Engineers, and of the General Staff of the Army; His Majesty the King of Serbia, Colonel Petar Pechitch, of the General Staff, and Colonel Douchan Toufegdjitch, of the Infantry, who, after having communicated to each other their full powers, found in good and due form, have agreed as follows:

ARTICLE 1

In case of war between one of the allied states and a third Power, arising in the circumstances provided for by the treaty of alliance between Greece and Serbia, or in case of a sudden attack by important masses — at least two divisions — of the Bulgarian army against the Hellenic or Serbian army, the two states, namely Greece and Serbia, promise to each other mutual military support, Greece with all her land and sea forces, and Serbia with all her land forces.

ARTICLE 2

In the beginning of the hostilities, at whatever moment they begin, Greece is bound to have an army of ninety thousand fighting men concentrated in the region between the Pangaion Mountain, Salonika, and Goumenitsa, and Serbia an army of one hundred and fifty thousand fighting men concentrated in the region of Ghevgheli, Veless (Kioprulu), Koumanovo, Pirot. Besides, Greece is bound to have at the same time her fleet in the Ægean Sea ready for action.

ARTICLE 3

The two states are bound to bring to the zone of operations their remaining military forces, as soon as these shall be available.

ARTICLE 4

A decrease of the forces mentioned in Article 2, either by demobilization or by the transportation of troops elsewhere, is not permitted, unless it be after a written agreement between the General Staffs of the armies of the two allied states.

But if Greece, in the case provided in Article 1, should, at the same time, be found in the necessity of defending herself against an attack of a Power other than Bulgaria, she shall be bound to go to the assistance of Serbia, attacked by Bulgaria, by a number of troops fixed by a joint agreement in due time between the two General Staffs, according to the military situation and in consideration of the security of the territory of the Kingdom of Greece.

Inversely, if Serbia should be in need of defending herself against an attack by a Power other than Bulgaria, she shall be bound to go to the assistance of Greece, attacked by Bulgaria, by a number of troops fixed by common agreement in due time between the two General Staffs, according to the military situation, and in consideration of the security of the territory of the Kingdom of Serbia.

ARTICLE 5

In case one of the contracting parties shall declare war against Bulgaria or against another Power, without a previous agreement and the consent of the other contracting party, the latter shall be released from the obligations imposed by Articles 1 and 2 of the present convention. It shall nevertheless maintain a benevolent neutrality towards its ally during the continuation of the war and shall be bound to mobilize immediately in its territory, Greece, at least forty thousand fighting men and Serbia at least fifty thousand fighting men, in such a manner as to protect its neutrality and consequently the liberty of the movements of the allied army.

ARTICLE 6

The military operations against Bulgaria shall be based on a common plan of operations. This plan of operations shall be drawn up by the respective General Staffs of the two states or by their delegates. It may be subsequently modified in consequence of a change of the military situation, by a joint agreement in writing of the two General Staffs.

ARTICLE 7

After the opening of the hostilities, whatever the course of the military operations might be and whatever the places through which, during the military operations, the troops of the one or the other of the allied states pass, and whatever may be the cities, villages or positions occupied by these troops for military necessities, the final occupation of the country lying beyond the boundary line between Greece and Serbia on one side and Bulgaria on the other, provided for by the treaty of alliance between Serbia and Greece, of which the present convention forms a complement, is regulated as follows:

Greece has the right to occupy definitely and to annex the country lying to the south and east of the line which, starting from a point on the Vardar immediately to the north of Sehovo, passes between the villages of Bogoroditsa and Mazucovo, afterwards by the crest line between the villages of Selimli and Dautli it proceeds towards the altitudes 535, 227, runs through the lake proceeding towards the altitude 208, and afterwards towards the altitudes 397, 1494, the crest line of the Beles Mountain, a summit of 1800 M to the northwest of Karakioi up to altitude 2194 (Perelik).

Serbia has the right to occupy definitely and to annex the country lying to the north and the northwest of the said line.

Greece concedes that Serbia shall occupy a zone of territory of a width of ten kilometers, lying on the left shore of Nestos—Mesta (Karassou), to the north of Xanthi and to the east of Burt-Gölü. Serbia, on the other hand, is bound to allow Greece to have freedom of passage through this zone and declares that she recognizes the influence of Greece in all the territory lying to the east of this zone and recognizes that she has no claim whatever upon it

If, during the military operations, one of the two armies occupies part of the country, cities or villages, situated in the zone which should be occupied by the other army, it is bound to evacuate them as soon as the army which, according to the previous paragraph, has the right to their occupation, demands it.

ARTICLE 8

The ultimate object of the military operations of the allied Greek and Serbian armies being the destruction of the military forces of Bulgaria, if one of the two armies can not attain that object in its own

theatre of operations, it is bound to accept the assistance of the other in the same theatre [of operations]. Still, the army which has attained this object in its own theatre of operations is bound to go to the assistance of the other, independently of the fact that this assistance was asked for or not, in order that by a joint action of the two allied armies, Bulgaria may be forced to submit to the conditions laid down by the two allied states and conclude peace.

ARTICLE 9

Neither of the two allied armies can conclude an armistice of more than twenty-four hours duration nor tacitly suspend hostilities.

An armistice of more than twenty-four hours duration can not be concluded except upon a joint agreement in writing of the two allied states. This agreement shall at the same time determine the conditions of the armistice.

ARTICLE 10

The allied armies will mutually enjoy, the one on the territory of the other high contracting party, all the rights and privileges granted to the armies of the country (national) by virtue of the laws and ordinances in force, except in matters of requisitions, general maintenance, revictualling, sanitary service, transportation of the wounded and sick, burial of the dead, and the transportation of all the material and provisions destined for the use of the troops. For such purposes the military and civil authorities of the two contracting parties are bound to render every assistance and service requested by the allied armies.

The payment of the purchases made for the needs of the army of one of the two allied states stationed in the territory of the other, shall be made regularly in cash, according to market price. In exceptional cases payments may be made by vouchers placed at the disposal of the allied army and at its request by the proper authorities of the other ally.

The current rate of the Greek and Serbian coin or paper money shall be fixed by a joint agreement of the two allied governments. It goes without saying that in the territories taken from the enemy and occupied by the allied armies, the two contracting parties shall enjoy in regard to the maintenance and the revictualling of their troops the rights conceded by the laws of war.

Each allied army shall enjoy these privileges only in the territory which belongs to its own zone of occupation, as such zone is indicated in Article 6 of the present convention. The expenses for the transportation of troops, all necessary material in general, war booty, etc., by railways or ships, shall be borne by the contracting state in whose territory such transportations shall be effected.

ARTICLE 11

The war booty shall belong to the allied army which captured it. In case the booty is captured in a common battle of the allied armies, on the same battle-field, it shall be divided in proportion to the number of fighting men of the two armies who participated in it.

ARTICLE 12

The present convention shall be valid as long as the treaty of alliance between Greece and Serbia, of which it forms a complement, remains in force. Article 2 of the present convention may be modified by a joint agreement in writing of the General Staffs of the two respective states, after the passing of the present crisis and demobilization is ordered.

ARTICLE 13

The present convention shall come into force from the day of its ratification by their Majesties the King of the Hellenes and the King of Serbia, or by the respective governments of the allied states.

In faith whereof the plenipotentiaries have signed the present convention.

Done in duplicate, in Salonika, the nineteenth day of May in the year 1913.

For Greece:

X. STRATIGOS.

For Serbia:

Colonel PETAR PECHITCH.

Colonel DOUCHAN TOUFEGDJITCH.

II. NEGOTIATIONS

No. 5

Mr. L. Coromilas, Minister for Foreign Affairs, to Mr. J. Alexandropoulos, Minister of Greece at Belgrade.

(Telegram)

ATHENS, May 10/23, 1913.

We have just received your telegram about the note which the Serbian Government will send to Sofia. Notwithstanding the Bulgarian attack, which is becoming general at Pangaion, we did not wish to take the offensive and march against Serres — which would have compelled the Bulgarians to change their attitude — in order not to find ourselves unexpectedly in a state of war. But the situation can not be protracted, because it is very dangerous and we should make a decision. The time for the signature of the treaty expires on the 12th of May (O. S.) and it is necessary that it should be signed in Belgrade. You have by telegram the text of the full powers which we shall send to you by special courier. You can sign before it reaches you.

In regard to the modifications to be made in the secret treaty, which are mentioned in your telegram of the 9th instant, accept that in Article 5 by inserting after the words "to mediation or arbitration" the words "of the sovereigns of the Entente Powers or the chiefs of other states." Accept equally the omission of the words "the soonest." In the same article instead of the wording "the two high contracting parties reserve to themselves the right to propose, etc." we prefer the original wording "the two high contracting parties will propose, etc." As I informed you by my communication of April 30, the change of the verb "will propose" to "reserve to themselves" was due to the omission of the words which they now accept. We also accept that the second paragraph of Article 4 should be worded as follows: "The eastern Serbian frontier will follow from Ghevgheli the Axios river, etc."

In regard to the modifications of the military convention, Article 1, according to your telegrams, would be worded as follows: "In case of war between the two allied states and another state, entered into under the circumstances provided for in Article 5 (the number

is missing in your telegram) of the treaty of alliance between Greece and Serbia, or in case of a sudden attack of the Bulgarian army against the Greek or Serbian army, the two states, namely Greece and Serbia, promise to each other — (up to:) all her land forces." We accept it in the above wording.

In regard to the provisions of Article 6 of the convention, we give you full liberty to negotiate on them, trying to improve them and at last to accept them, if there is no way of doing otherwise. You will have in that the aid of Captain Stratigos. Try to finish the earliest possible.

Offer our thanks to the Serbian Government for their step at Sofia. As soon as it presents a note for the revision, we can accelerate our joint steps, in order to hasten the negotiations of partition.

COROMILAS.

No. 6

Mr. J. Alexandropoulos, Minister of Greece at Belgrade, to Mr. L. Coromilas, Minister for Foreign Affairs, Athens.

(Telegram)

BELGRADE, May 10/23, 1913.

I communicate the following telegram drawn up by Captain Stratigos:

After an understanding with the President of the Ministerial Council and in the presence of Colonel Toufegdjitch, who signed the military convention in Salonika, the Minister of Serbia at Athens handed to us a memorandum containing the modifications proposed by the Serbians in Articles 1 to 6 of the military convention signed in Salonika. He wishes urgently to have an answer on these propositions.

In regard to Article 1st, the Serbians propose to modify it as follows: "In case of war between one of the two allied states and a third Power, entered into under the circumstances provided for by Article — of the treaty of alliance between Greece and Serbia, or in case of a sudden attack." The remainder is not modified. This article as it is worded in Salonika, from the military point of view is more advantageous to us, while as it is now worded, it serves only the interests of Serbia. The strictly defensive character of the alliance is to the advantage of the Serbians, who do not claim from the Bulgarians more than what they possess today, while it deprives us of the right to claim all the territory which has been

determined in the protocol to the south of the Kilkitch-Orliaco line, occupied now entirely by the Bulgarians, inasmuch as an advance on our part with the view of occupying these points might be interpreted by the Serbians as a provocation. Besides, this strictly defensive character contributes in leaving to Bulgaria every initiative and liberty of action, which from the military point of view is very disadvantageous. The extension of the alliance not only against Bulgaria but also against any third Power is, from the military standpoint, detrimental to our interests and favorable only to the Serbians. In fact, the latter have but land frontiers and have as neighbors more states than we have with whom they could at a given time come into conflict, in which case we would be obliged to assist them; on the contrary, it is only with Bulgaria that we can come in conflict by land and it is in that case only that the help of Serbia could be useful to us. For our eventual differences with other Powers who could attack us by sea, the assistance of Serbia would be nothing. So, in order to bring into harmony Article 1st of the military convention with the respective provisions of the treaty of alliance, we venture to suggest that it would perhaps be more advantageous to modify the respective provisions of the treaty of alliance according to the exigencies of our military interest.

As for Article 6 of the military convention the Serbians demand to modify it as follows:

After the beginning of the hostilities, whatever the course of the military operations might be and whatever the places through which, during the military operations, the troops of one or the other of the allied states go through and whatever might be the cities, villages or localities which may be occupied by these troops for the sake of military necessities, the occupation of the territories situated to the east of the Serbian frontier on the Vardar (Axios) river, as it is determined by the treaty of alliance between Serbia and Greece, of which the present convention forms a complement, is regulated as follows:

The Greek army has the right to occupy the territories situated to the south and the southeast of the line, which, starting about three kilometers to the south of Ghevgheli on the Vardar, proceeds towards the east between the villages Bogoroditcha and Mazucovo, to the north of the village Selimli, to the south of Dautli, and from there ascends up to the altitude 535, it proceeds towards the altitude 420, by Hissar-Tepe; altitude 127, altitude 217, altitude 490, altitude 576, from there by the mountain range of the Kroussa Balkans up to the altitude 645 [to] the Butkova lake and reaches the Strouma river, from which it [words illegible] towards the altitude 1800, to the north of Karakioi, altitudes 2194, 4038, 8994, 8475. The Serbian army has the right to occupy the territories situated to the north of the same line. If during the course of the operations . . . etc.

The Serbians claim this line, as it is fixed above, alleging that in case of a successful war against Bulgaria, we shall be sufficiently compensated by an extension of our frontier to the east. Such a proposition — which in every other circumstance may be worthy of

discussion — should now be rejected, not so much because we shall be deprived of a sufficiently large extent of a rich country, but especially for purely military reasons; because by accepting the line proposed by the Serbians we shall find ourselves, even after a successful war against Bulgaria, deprived of natural and strong boundaries to the north of Salonika, such as Mount Beles would constitute. Mount Beles and, to the east, the narrow pass of Demir Hissar in the hands of another state would give to her the advantage of being able to concentrate against us her army in the valley of Strouma and have it advanced towards the plain of Serres and Salonika. Our occupation of Milovitsa and the narrow pass would oblige it on the contrary to concentrate itself much more to the north and delay greatly its advance, which would be an incalculable benefit and greatly favorable to a possible operation in that region. Another very great inconvenience offered by the proposed line is that it would deprive us of an entire portion of the Salonika-Serres Railway line, from Kilindir to the Hani-Derven Bridge, on the Strouma. The building of a new railway line from Salonika to Serres passing beyond the proposed boundaries, would meet great difficulties on account of the very configuration of the ground.

ALEXANDROPOULOS.

No. 7

Mr. J. Alexandropoulos, Minister of Greece at Belgrade, to Mr. L. Coromilas, Minister for Foreign Affairs, Athens.

(Telegram)

BELGRADE, May 13/26, 1913.

I communicate to you the following telegram of Captain Stratigos:

The modifications of the military convention, which the Serbians demand, after a study by their General Staff, are as follows:

Article 1. In case of war against one of the two states, entered into, in the circumstances provided for in Article 1 of the treaty of alliance between Greece and Serbia, or in case of a sudden attack of important masses of the Bulgarian army against the Greek or Serbian army, the two states, namely Greece and Serbia, promise to each other mutual support, Greece by all her military forces on land and sea and Serbia by all her military forces on land.

They demand that this formula should be final, and insist that this article should be connected not with the fifth of the treaty which anticipates a war against Bulgaria only, but with Article 1, which extends the alliance against other states, and this because they add that if it referred only to Bulgaria they would not have needed our alliance. Furthermore, it seems that after the last encounters they add the words "important masses." It seems to me that we

can accept this latter point, provided a clear formula is found capable of avoiding misunderstandings. As to the connection of this article either with the first or fifth articles of the treaty of alliance, as this is a principal question, I shall await your instructions.

Article 2. They demand that the Greek army shall be increased from 90,000 to 100,000 fighting men. I think that we can accept this modification.

Article 3 unchanged.

Article 4. The Serbians add a second paragraph which is as follows:

But if Serbia, in the case provided for in Article 1, finds herself at the same time in the necessity of defending herself against an attack on the part of another Power than Bulgaria, she will be bound to go to the assistance of Greece, attacked by Bulgaria, by all her available military forces. Inversely, if Greece is found in the necessity of defending herself against the attack of a Power other than Bulgaria, she will be bound to go to the assistance of Serbia, attacked by Bulgaria, by all her available military forces.

This addition is acceptable in principle. I have proposed that it should be worded in a manner insuring a convenient utilization of the military forces according to the military necessities and in a manner so as to avoid every cause of abuse.

After this article they propose:

In case one of the contracting parties should declare war against Bulgaria or against another Power, without the previous agreement and consent of the other contracting party, the latter will be freed from the obligations imposed by Articles 1 and 2 of the present convention. Still, it should observe a benevolent neutrality towards its ally throughout the duration of the war and be bound to mobilize immediately at least 50,000 fighting men and to concentrate them in a manner so as to protect the freedom of movement of the allied army.

I think that this article can be accepted up to the words "throughout the duration of the war."

Articles 5, 7, 8, 9, 10 unchanged.

The discussion on Article 6 will take place tomorrow.

At the end of the convention we shall add: first an article concerning the revictualling, the sanitary service, the transportation of the wounded, the burial of the dead, the transportation of material and provisions, the manner of the payment of the expenses, the exploitation of the resources of the occupied territories, and the manner of regulating the expenses of transportation by sea and railway; and secondly an article concerning the manner of the distribution of the booty.

In order to gain time we shall discuss the above articles with the military delegates and will agree upon a final formula under the reservation of your approval.

ALEXANDROPOULOS.

No. 8

Mr. L. Coromilas, Minister for Foreign Affairs, to Mr. J. Alexandropoulos, Minister of Greece at Belgrade.

(Telegram)

ATHENS, May 14/27, 1913.

We reply to the two telegrams of Captain Stratigos dated May 10 and 13.

Article 1 of the military convention. We conclude that this article has been finally worded as follows:

In case of war against one of the two states, waged in the circumstances provided for by their treaty of alliance, or in case of a sudden attack of important masses ("forces" would be preferable) of the Bulgarian army against the Greek or Serbian army, the two states promise to each other mutual support, Greece with all her military forces on land and sea and Serbia with all her military forces on land.

Captain Stratigos had telegraphed that he would make clearer the words "important masses" in order to avoid any misunderstanding, but he has not communicated to us the announced modification by him. We accept the article in its final wording under the reservation to formulate more clearly, if necessary, the words "important masses."

Article 2. We have replied that the number of 90,000 for the Greek army should be maintained.

Article 3 unchanged.

Article 4. Concerning the second paragraph "But if Serbia . . ." up to the end "by Bulgaria, by all her available military forces." We accept it in principle, but we would wish that you should give us a better formula insuring a convenient utilization of the military forces.

Article 4 bis: "In case one of the two contracting parties should declare war against Bulgaria or against another Power, without a previous agreement and consent . . ." up to ". . . throughout the duration of the war."

Captain Stratigos has telegraphed that it was not to our interest to accept what comes after, namely, "and shall be obliged to mobilize immediately at least 50,000 fighting men and to concentrate them

in a manner so as to protect the liberty of movement of the allied army," but he did not inform me what the Serbians had finally accepted. We think that it would be better to insert "shall be obliged to concentrate — fighting men," etc., instead of to "mobilize, etc."

The number of fighting men should be fixed by the General-in-Chief, taking into consideration that our army will be more numerous in future.

Article 5 unchanged.

Article 6. We have noticed that Captain Stratigos has succeeded in obtaining in our favor an improvement of the line of the military occupation proposed by the Serbians, but he should have fixed it more in detail. We insist that the line, which will be finally fixed, constitute the eventual frontier between Greece and Serbia. Besides, the Serbians seem to accept it, provided the thing is kept secret, but as compensation for this line they demand that from Karakioi, Serbia may claim a strip of territory along the Nestos of a width of 10 kilometers maximum in order to acquire a port and a railway line of her own to the Ægean Sea. This would constitute a great advantage for Serbia and in return she would perhaps cede to us half of the Doiran lake. Therefore, this question is worthy of great attention and for that reason I shall give you supplementary instructions.

The other articles unchanged.

We accept in principle the questions dealt with in the two additional articles and we are awaiting their formulation.

COROMILAS.

No. 9

Mr. L. Coromilas, Minister for Foreign Affairs, to His Majesty the King, at Salonika.

(Telegram)

ATHENS, May 14/27, 1913.

I have the honor to communicate to your Majesty a telegram sent to Belgrade. I suppose that the Serbian delegates will come to Salonika and that the context of the said telegram may be of use to Captain Metaxas.

I call the attention of Your Majesty to the new demand of Serbia for an outlet to the Ægean. I think that we can accept it on con-

dition that we shall be insured the freedom of passage and the right for our railways to go through it. The strip of territory should, at any rate, be fixed so as to pass between Xanthi, Yenidje and Gioumouldjina, and to leave these three cities outside the Serbian strip [of territory].

COROMILAS:

No. 10

Mr. L. Coromilas, Minister for Foreign Affairs, to Mr. J. Alexandropoulos, Minister of Greece at Belgrade.

(Telegram)

ATHENS, May 17/30, 1913.

As the situation is aggravated in consequence of the continuous attacks of the Bulgarians, and we are unable to confront them without attacking them elsewhere, the President of the Ministerial Council, in agreement with His Majesty, telegraphs to you to conclude and to sign, if possible, today. If Serbia still insists for the strip of territory, you should accept it as follows:

A strip of territory, of a width not more than ten kilometers, starting from a point to be fixed on the line Karakioi-Perelik up to the Ægean Sea, passing between Xanthi and Gioumouldjina, is ceded to Serbia, which will insure to Greece the free passage through it, as well as all the facilities.

Answer urgently.

COROMILAS.

III. INTERPRETATION

No. 11

Mr. G. Streit, Minister for Foreign Affairs, to Mr. E. Venizelos, President of the Ministerial Council, at Trieste.

(Telegram)

ATHENS, July 11/24, 1914.

The Chargé d'Affaires of Germany called upon us and read strictly confidentially a telegram from his government, according to which, as the course of events do not seem to exclude a conflict between Austria and Serbia, the Imperial Government will be at the side of its ally. Bulgaria would probably take advantage of such

a situation. It is not known if Turkey will remain indifferent. It would be desirable that Greece should, in time, break away from Serbia; that, under such circumstances, the conclusion of an alliance with Turkey now would seem to be impracticable, but some sort of an agreement for mutual neutrality would seem to be indicated.

Before I gave an answer to these suggestions, I reserved to myself the right to communicate with Your Excellency and His Majesty whom I shall see this afternoon. I have, however, given assurances that the Royal Government will not fail to act in the sense of the maintenance of peace and, at the same time, I have pointed out the difficulty of our situation by reason of the obligations which we have assumed in the event of the participation of Bulgaria in the war by an attack against Serbia, and the danger of our being isolated if a similar situation should subsequently present itself to Serbia in a Greco-Bulgarian conflict.

STREIT.

No. 12

Mr. J. Alexandropoulos, Minister of Greece at Belgrade, to Mr. E. Venizelos, President of the Ministerial Council, at Munich.

(Telegram)

BELGRADE, July 12/25, 1914.

The President of the Council has just begged me to ask you: "If the Serbian Government can count on armed aid from Greece: 1st, in case Serbia is attacked by Austria, 2nd in case Serbia is attacked by Bulgaria." A similar question will be put to the Royal Government by the Minister of Serbia in Athens.

The President of the Council told me that Montenegro will range itself with Serbia in both contingencies, and that Roumania is taking steps to adjust the situation in order to prevent the war between Austria and Serbia, and that she will come to a decision later in case of a European War. His Excellency added that, according to their last advices from Petersburg, the Ministerial Council in Russia has decided to support Serbia militarily, but that they are waiting for the decision of His Majesty the Emperor of Russia.

ALEXANDROPOULOS.

No. 13

*Mr. N. Theotoky, Minister of Greece at Berlin, to Mr. G. Streit,
Minister for Foreign Affairs, Athens.*

(Telegram)

BERLIN, July 12/25, 1914.

I have just had a very long interview with Von Jagow, who told me that, as soon as he saw that the relations between Austria and Serbia were taking a critical turn, he instructed the representative of Germany at Athens to inform Your Excellency of this situation, and to give us the advice to keep away from Serbia as much as possible, even in case Bulgaria should participate in the Austro-Serbian conflict, which is most probable. I replied that I had knowledge of that communication, having been just informed about it by the President of the Ministerial Council from Munich,¹ and I added that Mr. Venizelos informed me that in case Bulgaria should think it proper to intervene, Greece could not permit it and that we would also immediately intervene. Von Jagow insisted in a very particular manner on the dangers which he foresaw in the case of the intervention of Greece to check Bulgaria. These dangers consist, according to him, in the possibility of Turkey acting against us, inasmuch as Serbia would be fighting with Austria, and, on the other hand, the possibility, on which he seems to be counting, of the abstention of Roumania from any interference [in favor] of Serbia, even if attacked by Bulgaria, because Roumania had always talked about the waters of the Triple Alliance and she would not at this moment be willing to find herself opposed to Austria and to the Triple Alliance. I insisted on the impossibility of our permitting Bulgaria to change the equilibrium established by the Treaty of Bucharest, and I explained to him that if we permitted such an aggrandizement of Bulgaria, we were running the risk of seeing this very Bulgaria become stronger than ourselves and attack us a few years from now. I said at last to Von Jagow that if he wished very much that none of the Balkan States should intervene, he should act at Sofia in order to compel Bulgaria to keep quiet.

I must advise you that from the reserve which I observed in the language of Von Jagow concerning the action of Bulgaria, I carried

¹ See document No. 11.

the impression that Austria must have concluded some sort of an agreement with Bulgaria about a common action.

Von Jagow admitted that he fully understood the extremely delicate position in which we find ourselves, but he repeated again his advice of abstention and neutrality, even in the case of Bulgarian intervention.

The Minister, reverting to the disposition of Turkey, told me that he is informed from various sources that the military party in Turkey always had the least friendly dispositions towards Greece, and that we should not overlook this circumstance.

THEOTOKY.

No. 14

*Mr. E. Venizelos, President of the Ministerial Council, to Mr.
G. Streit, Minister for Foreign Affairs, Athens.*

(Telegram)

MUNICH, July 12/25, 1914.

In regard to our attitude in case of an armed conflict between Austria and Serbia, reserving entirely our opinion on the application of the treaty of alliance, it would be necessary not to leave any doubt in the mind of those with whom you converse about our decision that we shall not stand with crossed arms in the presence of a Bulgarian attack against Serbia. It would be impossible for us to tolerate such an attack, which might result in an aggrandizement of Bulgaria and bring under discussion the Treaty of Bucharest. It is not only our duty of alliance towards Serbia, but a necessity imposed upon us for our own self-preservation.

VENIZELOS.

No. 15

*Mr. E. Venizelos, President of the Ministerial Council, to Mr. J.
Alexandropoulos, Minister of Greece at Belgrade.*

(Telegram)

MUNICH, July 13/26, 1914.

In regard to the communication made by the President of the Ministerial Council¹ please tell His Excellency that before I give

¹ See document No. 12.

a precise answer, I must come to an understanding with His Majesty the King and the Royal Government.

But, I authorize you to say to His Excellency that I transmitted to you my personal views, authorizing you to speak to him in a strictly confidential manner. These are my views: First, as for the contingency of a war between Austria and Serbia, I have the firm hope that such a war, which would be a real calamity for all of us, may be avoided, thanks to the well-known conciliatory spirit of His Excellency, strengthened by the advice of Russia and by that of all the real friends of Serbia; but if, by misfortune, the war should break out, we would make a decision as soon as we are in possession of all the elements, taking into account the efficiency of our aid. Second, in regard to the contingency of an attack by Bulgaria against Serbia, I am resolved to propose to His Majesty the King and to the Royal Government to oppose all our forces against Bulgaria, in order to relieve Serbia from every anxiety against the Bulgarian danger and to insure the maintenance of the treaty of alliance.

VENIZELOS.

No. 16

*Mr. G. Streit, Minister for Foreign Affairs, to Mr. N. Theotoky,
Minister of Greece at Berlin.*

(Telegram)

ATHENS, July 15/28, 1914.

Referring to your telegram of the 12th instant¹ I have the honor to inform you that I had a conversation with the Chargé d'Affaires of Germany, in the course of which I explained to him that a possible interference of Bulgaria in the Austro-Serbian conflict would create for Greece the duty to oppose it by all means. If, in fact, Bulgaria, notwithstanding the declarations of Mr. Rodoslavof, should be led to take advantage of the position of Serbia in order to attack her, there would follow a real subversion of the equilibrium of the forces in the Balkans and Greece would be in danger of being encircled and exposed to attack on the first occasion. The most elementary sentiment of self-preservation and security impels Greece not to tolerate an attack on Serbia by Bulgaria in order to reopen questions which have already been solved by the Treaty of Bucharest.

¹ See document No. 12.

Please take advantage of the first opportunity which presents itself to speak in this sense to the Minister for Foreign Affairs.

STREIT.

No. 17

Mr. E. Venizelos, President of the Ministerial Council, to Mr. G. Streit, Minister for Foreign Affairs, Athens.

MUNICH, July 16/29, 1914.

At the moment when the declaration of war by Austria obliges us to face serious contingencies, I think that I must indicate to you certain guiding aspects.

If in a war limited between Serbia and Austria, we can remain neutral, we should not forget that our alliance obliges us to mobilize immediately forty thousand men. Still, it is in the common interest of Serbia and Greece not to proceed from now to a step which would cause the general mobilization of Bulgaria and greatly risk the precipitation of some very grave events. Please give urgently the necessary instructions to our minister so that he may explain to the Serbian Government the reasons of our attitude and give to them the repeated assurance of our firm resolution to mobilize immediately in case of a Bulgarian mobilization. He should add that our attitude corresponds absolutely with the stand which the Serbian Government had decided to take, in the common interest, during our crisis with Turkey.

I am at the same time of the opinion that the coöperation of Greece and Roumania should have an immediate manifestation at Sofia, by an identical declaration of the two Cabinets that they are resolved to mobilize without delay in case of Bulgarian mobilization. Please come to an understanding with Bucharest in order that joint instructions may be given in the above sense to the respective ministers.

Besides, we should consider the possibility of a generalization of the war in order to determine beforehand our policy. My very considerate opinion is, that, in such a contingency, the Royal Government could for no price whatever, be induced to range itself with the opposite camp to that of Serbia and coöperate with her enemies.

against her; that would be contrary to the vital interests of Greece, the good faith of the treaties and the dignity of the state. I shall under no pretext whatever derogate from this policy.

VENIZELOS.

No. 18

Mr. G. Streit, Minister for Foreign Affairs, to Mr. J. Alexandropoulos, Minister of Greece at Nisch (Serbia).

(Telegram)

ATHENS, July 20/August 2, 1914.

In regard to the questions put by the Serbian Government concerning the attitude of the Royal Government in the Austro-Serbian conflict,¹ please make the following declaration to the President of the Ministerial Council, of which you are authorized to leave a copy with him should he request you to do so:

Without entering into an examination of the obligations resulting from her alliance with Serbia, the sole consideration that the independence and territorial integrity of Serbia are an essential factor in the Balkan equilibrium as established by the Treaty of Bucharest, to the maintenance of which Greece is firmly and resolutely attached, is sufficient to dictate to the Royal Government the resolution which it should take, at least for the present, in order to come more effectively to the aid of the friendly and allied nation.

The Royal Government is convinced that it fully fulfills its duty of friend and ally by the decision which it takes to maintain towards Serbia a most benevolent neutrality and to be ready to repel every attack from Bulgaria of which Serbia might be the object.

In fact, the participation of Greece in the war which is now waged, far from being useful, would in fact be very prejudicial to Serbia. Greece by becoming belligerent would offer to her ally but very feeble forces in comparison with the power of her adversary, while she would necessarily see Salonika, the only open port through which she [Serbia] is revictualled, the object of the resolute attacks of Austria.

Furthermore, the entrance of Greece into the war would fatally weaken the force of her army, which it is important in the common interest to maintain intact in order to check Bulgaria.

¹ See document No. 12.

The Royal Government is convinced that the Serbian Government will recognize that its decision is wise and inspired by real anxiety for their common interests.

The Royal Government repeats that it is ready to face the danger of a Bulgarian attack. It has already taken all the proper steps to facilitate, in the given circumstances, the mobilization of its army. If it has not yet mobilized, that is in order not to provoke in Bulgaria a similar measure, which would undoubtedly precipitate events by complicating unprofitably the present state of affairs. Besides, the Greek mobilization will be finished, when the time comes, if not sooner, at least simultaneously with that of Bulgaria.

The Royal Government hopes that its views on this subject agree absolutely with those of the Serbian Government, which, at a given time, it may be pleased to communicate to us.

STREIT.

No. 19

Mr. N. Theotoky, Minister of Greece at Berlin, to His Majesty the King, at Athens.

(Telegram)

BERLIN, July 22/August 4, 1914.

His Majesty the Emperor of Germany has just telegraphed to me asking me to go immediately to him. As soon as I was ushered to His Majesty, he gave me to read a telegram which he had just received from Your Majesty transmitted by the Chargé d'Affaires of Germany. His Majesty the Emperor asked me urgently to telegraph to Your Majesty the following:

The Emperor informs Your Majesty that an alliance was today concluded between Germany and Turkey; that Bulgaria and Roumania are equally ranging themselves with Germany; that the German ships which are in the Mediterranean will be joined with the Turkish fleet in order to act together. From the above Your Majesty will see that all the Balkan States have sided with Germany in the struggle which has been undertaken against Slavism. His Majesty in bringing these considerations to the knowledge of Your Majesty begs him, appealing to a comrade, a German Marshal,—of whom the German army felt proud when that title was bestowed upon him, and to his brother-in-law, and reminding him that it was thanks to the support

of His Imperial Majesty that Greece retained Cavalla definitely, to be pleased to order the mobilization of his army; to place himself at the side of the Emperor and to march together, hand in hand, against Slavism, the common enemy. The Emperor has added that he is making this last and earnest appeal to Your Majesty, in this most critical moment, and that he is convinced that Your Majesty will respond to this appeal. If Greece does not side with Germany then there will be a complete rupture between Greece and the Empire.

Finally, His Majesty told me that what he demands from you is to put into execution what Your Majesty and he had so many times discussed. He observed to me that since the Bulgarians, to whom the Emperor and Germany had never been very [favorable], since with Germany, he can still hope that Greece will equally do so.

I must add that the Emperor appeared to me exceedingly decided in what he told me.

THEOTOKY.

No. 20

Mr. N. Theotoky, Minister of Greece at Berlin, to His Majesty the King, at Athens.

(Telegram)

BERLIN, July 22/August 4, 1914.

After having seen the Emperor I had a long conversation with Von Jagow, who confirmed to me, most confidentially, the conclusion of an alliance between Turkey and Germany. The Turkish troops will be under the high command of the Sultan and the Turkish generals, but General Liman will intervene in their direction. Bulgaria and Roumania will march on the side of Germany. Between Turkey and Bulgaria there exists a sure understanding, thanks to which these two countries could march against every state which does not follow the same policy. Von Jagow is of opinion that our security [imposes upon us] to march with the other Balkan States against Russia and Serbia. On my pointing out to him the danger of a *coup de main* on the part of England to which we are exposed by reason of our geographical situation, he replied that he did not think that England would act against us.

From what I have been able to understand, the negotiations with Bulgaria are conducted in Vienna. In regard to compensations, I

have had the impression that these are looked for in Serbia and Albania in case Italy remains in the reserved [attitude] which she is now observing. I do not think that the compensations to be given to Bulgaria in case of success have been fixed with precision between Vienna and Sofia, and I have reasons to believe that they have been simply outlined by the general term of "countries upon which Bulgaria has historical and ethnological rights."

If we decide to accede to the appeal of the Emperor, I think that we ought, after declaring that, in principle, we are ready to comply with that appeal, to demand precisely what they wish us to do, and what they would secure for us in case of success. I have the impression that they would not object at all to see us aggrandized at the expense of Serbia.

I beseech you to weigh in a most careful manner the immense consequences, for the present and for the future, which a refusal on our part to accede to the appeal of the Emperor would entail.

THEOTOKY.

No. 21

*Mr. G. Streit, Minister for Foreign Affairs, to Mr. N. Theotoky,
Minister of Greece in Berlin.*

(Telegram)

ATHENS, July 25/August 7, 1914.

I communicate to you the following telegram of His Majesty the King:

Please transmit the following, in answer to your telegram of July 22¹:

The Emperor knows that my personal sympathies and my political views draw me to his side. I shall never forget that it is to him that we owe Cavalla. After mature reflection, however, it is impossible for me to see how I could be useful to him, if I mobilized immediately my army. The Mediterranean is at the mercy of the united fleets of England and France. They would destroy our fleet and our merchant marine, occupy our islands and especially would prevent the concentration of my army which can only be effected by sea because there does not yet exist any railway. Without being able to be useful to him in anything, we would be wiped off the map. I am necessarily of opinion that neutrality is imposed upon us, which could be useful to him, with the assurance that I shall not touch his friends, my neighbors, as long as they do not also touch our local Balkan interests.

CONSTANTINE R.

¹ See document No. 19.

STREIT.

No. 22

Mr. N. Theotoky, Minister of Greece at Berlin, to Mr. G. Streit, Minister for Foreign Affairs, Athens.

(Telegram)

BERLIN, July 25/August 7, 1914.

The news which you give me from Constantinople may be accurate as far as the present is concerned, but this does not preclude that, notwithstanding the assurances which the Turks now give concerning their mobilization, they do not pursue the object indicated by my telegram to His Majesty. One should not lose sight of the fact that Turkey needs a whole month in order to mobilize and that she must do everything possible not to be disturbed in that. Her situation in the Balkans will present itself, as I had the honor of describing it to you, namely: Bulgaria will at a given moment march against Serbia. She will not be prevented by Roumania and will be insured against a possible attack by Turkey, so that, if Germany and Austria are victorious over Russia, it is incontestable that Bulgaria will be aggrandized at the expense of Serbia, and Roumania at that of Russia. That being so, have we an interest in watching this aggrandizement, which we can not prevent, without trying to aggrandize ourselves also? I do not think so. The only way to succeed would be to attack the Serbians together with the Bulgarians, and, if Germany and Austria are victorious, the Serbians will be so reduced that they will never be able to recover. We must try to come to an understanding for that purpose with the Bulgarians, to remain neutral as long as they also do so and to act as soon as they act. If we try to find [illegible words] we shall run the risk of being supplanted by all the others.

I think that such a policy would be perfectly comprehensible here, where they have no reason whatever to spare Serbia, which has today declared war against Germany. Furthermore, in view of the attitude which Italy maintains towards Germany and Austria, I am of opinion that, if an understanding is reached with Vienna, Berlin would have no objection whatever to our receiving compensations in Albania. With a non-existing Serbia, the reasons which have contributed to its [Albania's] creation and maintenance will cease to exist for Austria.

Evidently, I fully understand the scruples which such a policy

would inspire in you in regard to the relations that we have with Serbia; but it is now a question of our existence, and we must profit as much as possible from the general upheaval.

THEOTOKY.

No. 23

Mr. N. Theotoky, Minister of Greece at Berlin, to His Majesty the King, at Athens.

(Telegram)

BERLIN, July 27/August 9, 1914.

I transmitted through Von Jagow to His Majesty the Emperor of Germany the telegram which Your Majesty has done me the honor to send under date of July 25.¹ Von Jagow told me that he thinks that the Emperor will understand the necessity indicated by Your Majesty to maintain neutrality for the present. The minister repeated to me the advice which he gave the day before yesterday, that we should come to an understanding, as soon as possible, with Sofia and Constantinople, and added that Serbia now was considered "the bear's skin."

THEOTOKY.

No. 24

Mr. N. Theotoky, Minister of Greece at Berlin, to Mr. G. Streit, Minister for Foreign Affairs, Athens.

(Telegram)

BERLIN, July 29/August 11, 1914.

I just had a long interview with Mr. Zimmermann, which may be summarized as follows:

The Under Secretary of State thinks that Roumania does not care about the Treaty of Bucharest except in so far as that treaty concerns her. Bulgaria and Turkey are already linked together. Bulgaria will act in [proper] time against Serbia. As for Turkey, she expects to act against Russia. Mr. Zimmermann does not exclude the possibility of Turkey and Bulgaria attacking us, if we attempt to check the attack of Bulgaria against Serbia. As you see, we are isolated.

¹ See document No. 21.

Mr. Zimmermann expresses also the opinion that we must try to come to an understanding with Sofia and Constantinople, although the thing seems to him to be very difficult. If an understanding can be reached, we must remain neutral as long as the others remain so and act as soon as they act, having Serbia as the objective. If this is not done, the only thing left to us is to maintain neutrality. The Under Secretary is of opinion that as soon as the German troops have achieved one or two great victories against France, the Balkan States will act.

THEOTOKY.

No. 25

*Mr. G. Streit, Minister for Foreign Affairs, to Mr. N. Theotoky,
Minister of Greece at Berlin.*

(Telegram)

ATHENS, July 30/August 12, 1914.

I have the honor to inform you that the Minister of Germany came today to speak to me again about the possibility, which His Excellency considered as being imminent, of an attack by Bulgaria against Serbia, and of the attitude which Greece should from now on take in order that she may release herself from Serbia. His Excellency furthermore demanded that Greece should, in any case, maintain neutrality and not come to the assistance of Serbia; that, in case Bulgaria while attacking Serbia was attacked by Greece, he would be obliged to demand his passports and to leave his post in order to show that he considers such an action of the Royal Government as hostile.

I replied to the Minister of Germany that I should have to consider the declaration about the possibility of the rupture of the relation with Greece as not corresponding to the present situation, because such a contingency has not yet presented itself, and that according to our information, there is not yet even a Bulgarian mobilization. If Bulgaria mobilized, we would also do so immediately, and that independently of the attitude which we would take, because otherwise Bulgaria could take advantage of it in order to attack us.

I developed afterwards at length the point of view which you know, and according to which, if we impose upon Bulgaria the maintenance of neutrality, this action has only in view our primordial right of self-preservation, has a purely Balkan character, and is not directed against the two Central Powers, one of which, namely, Austria-Hungary, has

today declared to us that she is exercising in that sense a pressure at Sofia.

I added as my personal opinion that the Bulgarian mobilization should be avoided in the interests of the Central Powers themselves, because Bulgarian duplicity being known, the probability is not at all excluded that Bulgaria, once mobilized, may be carried away by the Russophile current to side herself with the Triple Entente, finding it to her interest to come to an understanding with Serbia.

Please add these arguments to the ones I have already communicated to you in my previous dispatch, and do not lose sight of the fact that the German Government, in approving our neutrality, does not demand from us at this moment to march with Bulgaria against Serbia.

Please ascertain also if the above declaration about the rupture of the relations with Greece reflects in fact the view of the German Government.

STREIT.

No. 26

Mr. E. Venizelos, President of the Ministerial Council, Minister for Foreign Affairs, to the Royal Legations in the Entente Powers and in Bucharest.

(Telegraphic Circular)

ATHENS, August 31/September 13, 1914.

The Minister of Germany came to see me in order to tell me that an agreement has been definitely reached between Bulgaria and Turkey. The latter will lend Bulgaria two army corps, with a view to a joint attack against Serbia, and will maintain four army corps in Thrace by way of threat against a possible attack from Roumania against Bulgaria. The Minister of Germany told me in addition that neither Bulgaria nor Turkey intend to attack Greece.

I replied to the Minister of Germany that, as I had already declared to him, it would be impossible for Greece to be an indifferent spectator in an attack by Turkey and Bulgaria against Serbia, and that besides her interests, her obligations of alliance oblige her to go to the defense of Serbia in case the action which is announced should be realized.

It is not impossible that the Minister of Germany made this communication to me in order to obtain a promise of neutrality from Greece, which the German Government would utilize at Sofia in order

to ask Bulgaria to come to an understanding with Turkey for the purpose of a joint attack against Serbia.

Please make the above known without delay and confidentially to the Minister of Foreign Affairs and telegraph to me his impression.

VENIZELOS.

No. 27

*Mr. Theotoky, Minister of Greece at Berlin, to Mr. E. Venizelos,
President of the Ministerial Council, Minister for
Foreign Affairs, Athens.*

(Telegram)

BERLIN, October 18/31, 1914.

This morning I had a conversation with Mr. Zimmermann, which may be summarized as follows:

The German Government seems to be satisfied that events have obliged Russia to declare war against Turkey, because he hopes that the state of war, which will necessarily extend to France and England; will contribute, on one hand, to the diversion of the Russian forces from their principal objective, namely, Germany and Austria, and on the other hand, hopes that owing to the state of war, Turkey will be able to declare a sacred war in Asia, in India and in Africa, and that the rising of the Islamic world will embarrass France and particularly England, which might fear for her position in Egypt and India.

In regard to us, the Under Secretary of State gave me again the most categorical assurance that Turkey is not thinking of attacking us and that the German interests require that Turkey should limit herself in waging war against Russia. He therefore advises us to remain indifferent spectators in this struggle.

As for Bulgaria, Mr. Zimmermann thinks that she will not intervene for the present and he expressed the opinion that, even should Bulgaria intervene later against Serbia, we would have every interest not to intervene. Having observed to him that we have a treaty with Serbia, he answered that today treaties have very little value, and he mentioned the small importance which the treaties binding Germany and Austria to Italy and to Rumania have exercised on the attitude which these last two Powers have followed from the beginning of the war. "Try to make," concluded the Under Secretary of State, "your links with Serbia as loose as possible."

THEOTOKY.

No. 28

Communiqué of the Gounaris Cabinet given to the press on February 25/March 10, 1915, the day that it assumed power.

Greece, after her victorious wars, had the imperative need of a long period of peace in order to work for the prosperity of the country. The organization of the public services, of the land and sea forces, and the development of the public wealth would have guaranteed against any attack the territories she acquired at so much sacrifice. It would have also permitted her to put into execution a program serving the interests of the state and to adopt a policy in conformity with the national traditions.

Under these circumstances, neutrality from the beginning of the war was a necessity for Greece. She had and always has the absolute duty to carry out her obligations of alliance and to pursue the satisfaction of her interests, without however risking to compromise the integrity of her territory.

The Greek Government, conscious that in this way she serves the interests of the country, is convinced that the patriotism of the people will insure to safeguard them entirely.

No. 29

Mr. G. Christaki-Zographos, Minister for Foreign Affairs, to Mr. J. Alexandropoulos, Minister of Greece at Nisch (Serbia).

(Telegram)

ATHENS, February 28/March 13, 1915.

After the official communiqué which was published on the assumption of power by the new Cabinet,¹ I instructed our representatives at London, Paris and St. Petersburg, to give to the respective governments categorical assurances that the new Cabinet would follow the policy inaugurated by Greece from the beginning of the present war, and that in no way was it intending to deviate from a line of conduct traced by its traditional sentiments, the bonds which unite her with the Protecting Powers and her vital interests. The divergences which brought about the recent crisis regarded the dangers of an immediate

¹ See document No. 28.

action, but do not touch the basis of our policy. I have expressed the same opinion to the Minister of Serbia at Athens, adding that the Royal Government is conscious of the community of interests existing between the two allied and friendly countries and that it has always been faithfully attached to the treaty of alliance between Greece and Serbia.

Please see the Minister for Foreign Affairs, and speak to him in this sense in order to dispel any uneasiness which he might probably have felt in consequence of the change of government in Greece.

ZOGRAPHOS.

No. 30

Mr. P. Psychas, Minister of Greece at Bucharest, to Mr. D. Gounaris, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

(Telegram)

BUCHAREST, July 17/30, 1915.

My English colleague told me that according to positive information, Germany had assured categorically the Government of Sofia that the neutrality of Greece was definitely assured, even in the case of an attack by Bulgaria against Serbia.

PSYCHAS.

No. 31

Telegraphic Circular of Mr. D. Gounaris, President of the Ministerial Council, Minister for Foreign Affairs, to the Royal Legations at Paris, London, Rome, Petrograd, Nisch (Serbia), Berlin, Vienna and Sofia.¹

ATHENS, July 20/August 2, 1915.

I communicate to you the following telegram of our Bucharest Legation² and I beg you, in case similar language is used to you about it, to repeat what we so often declared, that a Bulgarian attack against Serbia could not leave us indifferent; and that the Bulgaro-Turkish agreement will only strengthen the bonds between the two countries.

GOUNARIS.

¹ This circular was communicated to the Minister of Greece at Bucharest.

² See document No. 30.

No. 32

Mr. E. Venizelos, President of the Ministerial Council, Minister for Foreign Affairs, to Mr. N. Theotoky, Minister of Greece at Berlin.

(Telegram)

ATHENS, August 21/September 3, 1915.

The prospect of a possible attack against Serbia by the combined Austro-German forces preoccupies intensely the Royal Government and this on account of the more and more evident *rapprochement* between Bulgaria and the Central Empires. If this *rapprochement* had no other effect but to insure to the Teutonic forces a free passage through Bulgaria, we would have no reason whatever to be alarmed. But if, taking advantage of the arrival of Teutonic forces, Bulgaria should attack Serbia, we could not remain indifferent before the prospect of a probable crushing of our ally by Bulgaria. Independently of the extent of our obligations of alliance, our vital interest would compel us to do everything in order to forestall a Bulgarian victory, of which we would become, sooner or later, the first victims.

The German Government will undoubtedly have in view these various contingencies in deciding upon the expedition through Bulgaria, but you would do well to seize a favorable opportunity in order to give again an explanation of these views in your private character, by saying that they represent the opinion predominating in the country. We think that the German Government has no interest in seeing the outbreak of a Balkan War and will continue to wish that Greece will not abandon her neutrality. We may therefore hope that, in any case, even in case the eastern expedition is organized, it will use all its influence to check Bulgaria, dissuading her from any attack against Serbia in order to insure the maintenance of peace in our own frontiers.

Please transmit without delay the result of your step.

VENIZELOS.

No. 33

Mr. A. Zaïmis, President of the Ministerial Council, Minister for Foreign Affairs, to all the Royal Legations.

(Telegraphic Circular)

ATHENS, September 25/October 5, 1915.

The new Cabinet, having studied the various aspects of the exceedingly complicated international situation before which it now finds itself, is in a position to affirm that its policy will rely on the same essential bases as that followed by Greece from the beginning of the European War. Greece, in order to insure better her vital interests, will remain in a state of armed neutrality and will adapt herself to the events, the evolution of which the new Cabinet will follow with unabated attention.

Please be guided by the above both in your diplomatic conversations and interviews with the representatives of the press.

ZAIÏMIS.

No. 34

Mr. A. Zaïmis, President of the Ministerial Council, Minister for Foreign Affairs, to Mr. J. Alexandropoulos, Minister of Greece at Nisch (Serbia).

(Telegram)

ATHENS, September 29/October 12, 1915.

The Minister of Serbia left with me a copy of a telegram from his government, which, considering that the anticipation of an impending attack of the Bulgarian forces against the Serbian army produces the *casus foederis* provided for by our alliance, urgently requests us to inform them if, in accordance with our agreements, the Greek army will be ready to act against Bulgaria and if the Royal Government will be disposed to give to the General Staff the necessary instructions to come to an understanding with the Serbian Staff in order to determine the details of a plan of coöperation against Bulgaria.

The Royal Government regrets exceedingly that it can not accede to the demand of the Serbian Government formulated in that manner.

In the first place, it considers that in the present circumstances, the *casus foederis* does not arise. In fact, the alliance which was concluded in the year 1913 in anticipation of a Bulgarian attack and with the view of establishing and maintaining an equilibrium of forces between the States of the Peninsula after the partition of the territories conquered jointly from the Ottoman Empire, has, according to the very preamble of the treaty, a purely Balkan character, imposing in no way the application of the treaty in the vicissitudes of a general conflagration. In spite of the generality of the terms of article first, the treaty of alliance and the military convention which completes it, prove that the contracting parties had in view only the hypothesis of a single-handed attack by Bulgaria directed against one of them. Article 4 of the military convention itself furnishes the proof, because being intended to limit the aid of one of the allies already occupied elsewhere, it does not foresee any other *casus foederis* but the attack of Bulgaria against the other ally. Nowhere is there any question of a combined attack of two or more Powers. On the contrary, no matter how broad the general provision of the first article of the military convention may be in its terms, it is limited to the hypothesis of a war between one of the two allied states and only one other Power. And it could not have been otherwise; it would have been an act of foolish conceit to stipulate, in the contingency in which one of the parties would be at war with numerous states at the same time, for the granting of an evidently feeble and ridiculous assistance of the military forces of the other party.

It is therefore beyond question that exactly this hypothesis now presents itself. If the Bulgarian attack feared by the Serbian Government takes place, it will be due to an agreement made with Germany, Austria-Hungary and Turkey. It will be carried out in combination with the attack already undertaken against Serbia by the two Central Empires. It will appear as an incident of the European War. The Serbian Government itself has already recognized that this was the character of the attack by breaking her diplomatic relations with Bulgaria in order to follow the example of the Entente Powers, her European allies, without previously coming to an understanding with Greece, her Balkan ally. It is therefore evident that the attack will be found to be outside the provisions as well as the spirit of our alliance.

But the Royal Government is convinced not only that under these

circumstances it is not bound by any contractual obligation, but is also persuaded that its military assistance offered spontaneously at such a time would badly serve the common interest of both countries. It is on account of that interest that Greece remained neutral in the European War, believing that the best service which it could render to Serbia was to check Bulgaria, preserving its forces intact and its communications free for a possible attack from [the latter State]. It was always ready to face the Bulgarian danger even when it appeared in the course of the European War, although Serbia was already struggling with two great Powers. For that reason, it hastened immediately to answer the Bulgarian mobilization by a general mobilization of its army. But it had always in view a Bulgarian attack undertaken separately, even in connection with the other hostilities undertaken against Serbia. The hypothesis of an attack concerted with that of other Powers was and ought to be outside of its anticipations; because Greece, intervening in such a case, would have been lost, without having the least hope of saving Serbia. Evidently, Serbia can not desire such a result. The common interest requires, on the contrary, that the Greek forces should be kept in reserve for a better use of them subsequently. It is therefore of importance that Greece should remain neutral and follow attentively the march of events, with the resolution to watch always, by the most appropriate means, both the preservation of her own vital interests and the protection of the interests which she has in common with Serbia.

The Royal Government, being convinced that the Serbian Government will recognize the correctness of the reasons which prevent Greece, in the present circumstances, from promising its armed assistance to Serbia, and feeling a profound regret for the actual impossibility, for the present, of doing more for Serbia, wishes to assure her, that faithful to their friendship, she will continue to give her all the aid and facilities compatible with her international position.

Please read the above to Mr. Pachitch, leaving with him a copy if he asks for it.

ZAIMIS.

No. 35

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to all the Royal Legations.

(Telegraphic Circular)

ATHENS, October 26/November 8, 1915.

The new Cabinet intends to follow in foreign affairs exactly the same policy as its predecessor. I am referring, in regard to this, to the dispatch of my predecessor of September 25th.¹ In your diplomatic conversations with the representatives of the press, please be inspired by the declarations therein contained.

SKOULODIS.

No. 36

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to Mr. J. Panourias, Chargé d'Affaires of Greece at Mitrovitsa (Serbia).

(Telegram)

ATHENS, October 26/November 8, 1915.

In speaking to the Serbian Government, please give the most categorical assurances of the sentiments of sincere friendship with which we are animated toward Serbia, as well as of our firm resolution to continue to afford her all the facilities and every support compatible with our own vital interests.

SKOULODIS.

No. 37

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to the Royal Legations at Paris, London, Rome and Petrograd.

(Telegraphic Circular)

ATHENS, October 26/November 8, 1915.

In speaking with the Minister for Foreign Affairs please give on my behalf the most categorical assurance of our firm resolution to continue our neutrality with the character of the sincerest benevolence

¹ See document No. 33.

towards the Entente Powers. Please add that the new Cabinet indorses the repeated declarations of Mr. Zaimis about the friendly attitude of the Royal Government towards the Allied troops in Salonika; that it is conscious of the real interests of Greece and that it owes to the Protecting Powers of Greece not to deviate in the least from this line of conduct. It therefore hopes that the sentiments of friendship of these Powers for Greece will not at any time be influenced by the malicious and misleading news which is circulated intentionally in the vain hope of impairing the good relations of the Entente with Greece.

SKOULOUDIS.

No. 38

Mr. J. Panourias, Chargé d'Affaires of Greece in Serbia, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

(Telegram)

MITROVITSA, November 2/15, 1915.

I spoke appropriately to the President of the Ministerial Council in the sense of your telegram of the 26th ultimo¹ received late yesterday evening. In my conversation with him on the declarations contained in the telegram of September 25th,² I developed again the arguments supporting our point of view. The President of the Council thanked me for the communication and added that the vital interests of Greece are identical with those of Serbia, that the aggrandizement of Bulgaria would be the ruin both of Serbia and of Greece, that the victory of the Austro-Germans could by no means guarantee the vital interests of Greece, and that he has the firm hope that Greece will intervene at the last moment.

I also had a conversation in the same sense with the Assistant Minister for Foreign Affairs, who told me nearly the same thing as the President of the Council, and he communicated to me, — justifying himself for the delay by the march of the events, — the reply of the Serbian Government given by [illegible words] on the foreign policy of the Zaimis Cabinet.

Here is the text of that reply:

¹ See document No. 36.

² See document No. 33.

At the end of September last, the Minister of Greece in Serbia delivered to the Serbian Government a copy of a telegram from his government¹ by which Greece, in reply to the appeal made to her by Serbia when the Bulgarian attack against Serbia was impending, declared that she regretted she was not able to give a favorable answer to our appeal to intervene against Bulgaria as soon as the latter should attack Serbia.

The reasons given by Greece in that reply were, that she considered that such a possible attack by Bulgaria at the present moment came under the vicissitudes of the European War and that in no case would it constitute a *casus foederis*, the Greco-Serbian alliance having a purely Balkan character.

The Serbian Government, being solely inspired by the solidarity of the vital interests of Greece and Serbia in the face of the Bulgarian danger, — the importance of which was also recognized by Greece in her reply, — considers that it is its duty to submit to the Greek Government the arguments which militate in favor of immediate action by Greece against Bulgaria. The spirit of the treaty of alliance, which guarantees the territorial integrity of each of the contracting states in case of attack, as well as its text, in which no mention is made that the treaty will cease to have binding force if Bulgaria is in alliance with another Power, prove in a clear and logical manner that Greece is bound to come to the assistance of Serbia, if the latter, without provocation on her part, is attacked by Bulgaria or another Power. The Serbian Government has not the slightest doubt that Bulgaria is attacking Serbia solely for the purpose of taking away from her the territories which she acquired by the Treaties of London and Bucharest, and in order to prevent Serbia and Greece from having contiguous frontiers. The object of the treaty of alliance with Serbia is to guarantee the situation which was created after the wars in the Balkan Peninsula, and this treaty has the character of a treaty of mutual guarantee of the integrity of Serbia and Greece. (Article 1st) This article, in fact, does not state that Serbia and Greece should be attacked by one enemy only and not by many; it speaks generally of an attack and not of the number of the attacking Powers. To suppose that the treaty had foreseen the case of the attack of one Power only and not of more, would mean that the treaty was intended to guarantee Greece and Serbia against the lesser danger but not against the greatest dangers. It therefore results from such an interpretation that the application of the treaty would cease to have binding force precisely at the moment when it was more than ever necessary.

The attack of Bulgaria against Serbia shows, according to the opinion of the Serbian Government, the evident intention of changing the existing situation in the Balkans. But had it even been but a

¹ See document No. 34.

simple incident in the present European War and not an event of a preëminent Balkan character, the important question would be, not what is the character of this war, but what is its object and what are the consequences which may result from it? Whether the territorial *status quo* in the Balkans is changed through a purely Balkan war, or through a combined European and Balkan war, the result is absolutely the same. In either case the Greco-Serbian interests are equally injured. [The disadvantage offered by the possibility] of a combined attack of Germans and Bulgarians against Serbia is [counterbalanced] by the military aid of the Powers of the Triple Entente, who have as their object the maintenance of the situation which was created and guaranteed by the Treaty of Bucharest.

Serbia in breaking diplomatic relations with Bulgaria without previously coming to an understanding with Greece, did not wish to recognize the European character of the possible Bulgarian attack; she only wished to characterize the Bulgarian mobilization as being directed against Serbia and [to consider it as] a menace to her existence. She did not come to an understanding with Greece in regard to the breaking of diplomatic relations with Bulgaria for the simple reason that she did not have the choice and it did not depend upon her to break or to maintain those relations. The rupture became inevitable on account of the aggressive attitude of Bulgaria. Therefore, we think that Greece, having ordered without a previous understanding with Serbia the general mobilization of her army immediately after the Bulgarian general mobilization, has [acted] in the same [manner as Serbia].

Greece herself recognizes that the present Serbo-Bulgarian war may endanger her own interests, and for that reason she promises to intervene at a favorable time, as much for the guarantee of our common interests as for her own special interests; but, according to the opinion of the Greek Government, this intervention, in order to become effective, must be made at a favorable time. The Greek Government therefore admits that it may intervene in the present war against the Bulgarian danger, which might present itself during the European War; it [admits] consequently the [possibility] of an intervention against two adversaries of Serbia, but only if their attack against Serbia is simultaneous and not combined, which from the military standpoint is the same thing. In both cases, namely, if her adversaries are allies or not, Serbia is bound to fight on two fronts and the military difficulties for Greece are the same.

[However], the Greek Government recognizing the possibility of its intervention during this war, considers that this intervention, should take place at an appropriate moment. It is more than evident that Serbia and Greece, joining their forces, could defeat the Bulgarians even if the latter were aided by the Germans, more easily than Greece, after being isolated, could defeat a Bulgaro-German coalition, to which she would have previously given time to defeat

Serbia. Greece by her present attitude gives to this coalition the opportunity of subduing first Serbia and afterwards Greece, while it is certain that it can not vanquish them simultaneously.

Having in view all the above [arguments] and the common [Greco-Serbian] interests, [the Serbian Government] begs to draw the attention of the Greek Government to the fact that Greece has repeatedly given to us the assurance that she would take part in the war, under the reservation only that Bulgaria should be left first to attack Serbia. [The very interest] of Greece imposes upon her the duty to begin operations immediately against Bulgaria with all her forces, even if no Greco-Serbian treaty of alliance existed. Any delay in the intervention of Greece may become fatal not only to Serbia but also to Greece. The Serbian Government therefore makes a final appeal to the Greek Government in order that this intervention may be effected immediately.

PANOURIAS.

No. 39

*Mr. A. Romanos, Minister of Greece at Paris, to Mr. E. Skouloudis
President of the Ministerial Council, Minister for
Foreign Affairs, Athens.*

(Telegram)

PARIS, March 28/April 10, 1916.

I have the honor to inform you that the refusal by the Royal Government of the proposals of the British and French Ministers concerning the question of facilitating [the passage] of the Serbian army through our territory, which came to the knowledge of the Ministry many days ago, has disposed the French Government very unfavorably toward us. Mr. Briand told me that under these conditions there can not be any more a question of furnishing to us an advance of 150 millions asked by the Royal Government. The commissary officer Bonnier told me the same thing in regard to the army supplies. For three days the newspapers, particularly the *Echo de Paris*, have published very violent articles, and news suggesting a blockade and other forcible measures on account of the attitude of Greece in general, without referring to the question of the passage of the Serbian troops. I have asked a well informed journalist, an acquaintance of mine, the reason for this campaign. He told me that this language of the French press is due to our refusal to allow the passage to the Serbians. They fail, however, for the present, to speak about the question of the passage of the [Serbian army], because, if the public were informed

about it, there would be a general reprobation against us and the French Government would perhaps be obliged to adopt an attitude which is repugnant to Mr. Briand, who wishes to maintain friendly relations between the two countries. The President of the Council wished to have the Serbians transported by sea around the Matapan promontory, but the Minister of Marine is opposed to it, because he considers the passage as dangerous and difficult on account of the submarines. It can not be denied that if a Serbian transport were sunk, public opinion would throw the responsibility upon us.

ROMANOS.

No. 40

*Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to Mr. A. Romanos, Minister of Greece at Paris.*¹

(Telegram)

ATHENS, March 29/April 11, 1916.

I can not but be painfully surprised by the declaration of Mr. Briand that, on account of the point of view of the Royal Government in the matter of the passage of the Serbian army, there could no more be a question of giving to us the advance of the 150 millions which we had asked. In fact, we did not ask this advance as a price for the violation of neutrality, to which we never thought of consenting, and there is nothing in our attitude which would justify the French Government in giving such a meaning to our request. We asked the financial assistance of the Western Powers, thinking rightly that they could not indifferently see Greece weakened militarily and disorganized financially. This point of view was certainly preoccupying the Powers because they did not oppose to our request any refusal in principle. Under these circumstances, the difficulty which has now arisen does not seem to be of a nature to alter the position of the financial matter, unless Mr. Briand intends to leave aside deliberately the considerations of a general and permanent order, in order to inflict upon Greece some kind of punishment for her refusal to consent to a serious violation of her neutrality. This conclusion is so illogical and iniquitous that it is impossible that it might be definitely reached by a mind

¹ This telegram was communicated to the Royal Legations at London, Rome, and Petrograd.

so penetrating and liberal as that of Mr. Briand, inasmuch as he is too keen not to perceive that, if Greece, wishing to remain neutral, is obliged to repulse energetically every new violation of her neutrality, she does not possess the necessary means to resist the pressure of a coalition of great Powers. Greece was obliged to endure or to tolerate many things, because she could not do otherwise and the Powers already know this, from long experience. There are others which, on account of the rapidity of their execution and their less troublesome character for the territory, escape the action and even the vigilance of the authorities. Thus, in the very matter which had so excited the Powers, something has just happened which confirms the experience of the past, because Sunday the French transport *Jean Corbiere*, carrying Serbian detachments from Corfu to Salonika, passed through the canal of Corinth, nearly completely unobserved, thanks to its innocent exterior.

Please be guided by the above, and have a semi-official and friendly conversation with Mr. Briand, in which you will not have any trouble in making him understand that Greece, being placed between two groups of Powers, is obliged to submit to the recriminations, the protests and the bad humor of the one, whenever her neutrality is in fact violated in favor of the other, and that, under these conditions, it is impossible for the Royal Government to maintain officially an attitude different from the present.

SKOULODIS.

No. 41

Note-verbale of the Serbian Government to the Hellenic Government communicated by Mr. J. Balougdjitch, Minister of Serbia at Athens.

ATHENS, April 7/20, 1916.

In order that the transportation to Salonika of the Serbian troops, now in Corfu, may be effected as soon as possible, which undoubtedly is also the desire of the Greek Government, and with the least possible risks, which is the principal anxiety of the Serbian Government, it is necessary that the transportation should be done by land from Patras.

The Serbian Government appeals first of all to the sentiments of humanity of the Hellenic Government, and begs that it may permit this passage; because, although there are other ways in Greek territory through which this transportation can be effected, the Serbian

Government insists on the above mentioned road only for the purpose of avoiding the sinking of any of its transports. The losses sustained by Serbia during this war are so great and so much out of proportion to her real forces, that the Serbian Government considers it has the right to find the means of avoiding at least unnecessary losses which are not connected with the operations.

This desire seems to them the more well-founded as the Hellenic Government, by permitting to the Serbian army this passage through its territory, would in no way help the military operations and, consequently, would not be suspected of betraying the neutral conduct which it has observed up to the present. It would simply perform an act of friendship and of benevolent neutrality towards Serbia, upon which the Serbian Government hopes to be able to count by reason of the very spirit of the Greco-Serbian treaty, independently of the interpretations which might be given to its various provisions.

Waiting with confidence the decision of the Greek Government, the Serbian Government considers it to be its friendly duty to call its attention to the disagreeable consequences which might result to Greco-Serbian relations, from a possible accident which might happen to a transport of Serbian troops, in consequence of the refusal of the Greek Government to permit their passage by land.

No. 42

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to the Royal Legations at Paris and London:-

(Telegram)

ATHENS, April 3/21, 1916.

The Minister of Serbia came to see me yesterday and handed to me a note² by which Serbia, appealing to Greece as an ally, begs her to consent to the transportation of the Serbian troops now at Corfu to Salonika, via Patras and the railway. The reason given is that any other means of transportation runs the risk of the destruction of the ships carrying these troops by enemy submarines.

In my answer, I declared to the Minister that I had already replied to the representatives of the Entente that the transportation of the Serbian troops by land absolutely could not be permitted by the Royal

¹ This telegram was communicated to the Royal Legations at Rome and Petrograd.

² See document No. 41.

Government and that, consequently, I could not enter into any new conversation with them on this subject.

I remarked to the Minister that my declaration was categorical and could in no way be modified, but that I would have no difficulty in studying the question in an entirely private form, which could in no case, however, have a political result or influence our declarations which have already been made. The Minister said that he would telegraph in this sense to his government.

I communicate the above to you for your exclusive guidance and beg you not to make any use of it in your conversations, unless the Minister for Foreign Affairs first brings up the question of the step of the Serbian representative.

SKOULOUDIS.

No. 43

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to the Royal Legations at London, Rome and Petrograd.

(Telegraphic Circular)

ATHENS, April 14/27, 1916.

Continuing my telegram of the 8th instant,¹ I have the honor to inform you that Tuesday the Ministers of France and England came to declare to me that their governments instructed them to support the step taken by the Minister of Serbia on April 7, and to give me the assurance that in using our railway the Serbian troops would not stop at Athens or anywhere, except the time necessary for the changing of trains.

I replied that these declarations had no object, since the Royal Government persisted resolutely in its refusal expressed from the beginning to any transportation of foreign troops by our railways.

As Monsieur Guillemin said in reply that he knew from the Minister of Serbia that I was negotiating with him, I answered that that was a great error. I narrated what happened between the Minister of Serbia and myself, according to the narrative contained in my above mentioned telegram of the 8th instant, and I affirmed that, according to our opinion, the exchange of views between the respective officers could in no way modify our decision to oppose energetically the passage by land of the Serbian troops.

¹ See document No. 42.

I gave the same explanation to the Minister of Serbia, who came to see me after his colleagues of France and England, and to the Ministers of Russia and Italy, who came on Wednesday to make the same representation as the others.

As the Ministers of the Entente, and particularly Monsieur Guillemin, do not seem to have well understood the very serious and absolutely legitimate reasons of our refusal, I consider it necessary to record them here, which kindly explain to the Minister for Foreign Affairs, in the hope that, understanding the gravity of the situation, he will be good enough to use all his influence at Paris to persuade the French Government to renounce the plan of effecting the passage of the Serbian army through our territory.

Such a passage would constitute the most flagrant and the most serious violation of our sovereignty and neutrality, which the other belligerent group would consider as a hostile act on the part of Greece, because it would be a forcible occupation [of our territory] in the very heart of our country. It would fatally create an unbearable perturbation in the transportation of persons and goods on the principal railway of the kingdom. It would result, notwithstanding all assurances to the contrary, by the very force of the circumstances, in the establishment of encampments of foreign troops in proximity to our principal cities and up to the very suburbs of the capital, thereby [resulting in] inevitable friction with the local authorities, inconveniences for the revictualling of our own populations, and serious dangers to the preservation of order and public health. It would at last lead to constant interferences of foreigners in the administration of the public services and to numerous arbitrary acts and restrictions upon personal liberty, of which we are constant spectators and have had sad experience at Salonika and Corfu.

It is because public opinion has immediately perceived the real danger to which the independence of the country would be exposed, being threatened in its most vital manifestations, that it rose with indignation against the plan of the passage by land and is resolved to demand from the Royal Government to use all its power in order to prevent its realization. Public opinion has borne heavily the numerous violations which have already taken place, and has submitted to them with resignation, concealing its emotion, whenever it was possible to excuse them on the ground of military necessity. But this time its patience is exhausted and its indignation aroused to the

point of leading it to commit acts of despair, because the Entente can not allege any necessity for the passage of the Serbians by land, since their transports navigate the Mediterranean in all directions from Alexandria to Salonika, from Salonika to Marseilles, from Marseilles to Corfu, without suffering much from the attacks of the enemy submarines. Therefore, it can not seriously be contended that there exists a greater danger to the transportation of the Serbians by sea, particularly since the canal of Corinth and the Straits of Euboia, the use of which we tolerate, allows the voyage to be limited to very small areas outside of our narrow seas. On the other hand, it can not be denied that the Serbians themselves were transported from Albania to Corfu, without any accident, notwithstanding the submarines and the mines in the Adriatic.

Under these circumstances, the civilized world will unanimously justify the legitimate resistance of the Royal Government, and will also unanimously condemn as a monstrous abuse of power any attempt of the Entente Powers to ignore our refusal.

Please telegraph urgently the result of your conversation.

SKOULLOUDIS.

No. 44

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to Mr. D. Caclamanos, Chargé d'Affaires of Greece at Paris.

(Telegram)

ATHENS, April 14/27, 1916.

I communicate to you the following telegram¹ which I have just sent to London, Petrograd and Rome, by which please be guided in your conversation with the Minister for Foreign Affairs about this serious matter in a purely private character and in your own name. I am really of opinion that, in view of the obstinacy shown by the French Minister, who claims to interpret faithfully the instructions of his government, every official discussion is not only useless but may embitter the relations which, on our part, we continue to wish to be sincere and friendly.

SKOULLOUDIS.

¹ See document No. 43.

PART SECOND

THE GERMANO-BULGARIAN INVASION IN MACEDONIA

No. 45

*Lieutenant General Baïras, Commander of the 6th Division, to
the General Staff of the Army, Athens.*

(Telegram)

SERRES, April 27/May 10, 1916.

A Bulgarian commander, who met one of our officers, declared to him that by reason of an agreement entered into between Mackensen and our government, the Germano-Bulgarians were permitted to occupy any point situated [up to] two kilometers of the frontier which might be considered useful from a strategical and tactical point of view, and that, relying on this authorization and in consequence of an order from the Commander-in-Chief, he had occupied the hills dominating Lehovo; that all the boundary line was at our disposal, except the occupied points, that the entrance of Bulgarian troops into Lehovo had been forbidden and that [he expected] a friendly settlement of the question.

BAÏRAS.

No. 46

*Lieutenant General Yannakitsas, Minister of War, to the IV Army
Corps, at Cavalla.*

(Telegram)

ATHENS, April 28/May 11, 1916.

According to the agreement entered into between the Germans and the Bulgarians, in the section Ali Boutous—Seïmen-Kayassi we shall retire one to two kilometers from the boundary line, while the Germans and the Bulgarians may reach the boundary line without crossing it, in order that a neutral zone may be formed to our disadvantage, since the Germano-Bulgarians are defending themselves

against the English and the French established in our territory. Consequently, both the small advances to the north of Vetrina as well as the advance made near Lehovo constitute a violation of our agreement. Inform the Bulgarian commandant of Lehovo that he is mistaken about the agreement. Explain to him what is really going on and tell him that the dispute will be settled by the governments. Add that, not doubting his good faith and with the view of maintaining friendly relations between the two states, you will not use force against him, and that he can stay where he is now until the pending question is settled by the government, but that you will prevent by force any new advance on his part or on the part of any other detachment. All this you will tell him as coming from you. The 3rd Army Corps should, in what concerns it, conform itself to the contents of the present order.

YANNAKITSAS.

No. 47

*Mr. E. Skouloudis, President of the Ministerial Council, Minister
for Foreign Affairs, to Mr. A. Naoum, Minister
of Greece at Sofia.*

(Telegram)

ATHENS, April 29/May 12, 1916.

Bulgarian troops have occupied certain points in our territory to the north of Vetrina and the heights of Lehovo. A Bulgarian commandant explained to one of our officers of the boundary region that these occupations were made in accordance with the agreement entered into between Marshal Mackensen and the Royal Government, according to which the Bulgarians have acquired the right to occupy any point which might be useful for their operations in a zone of two kilometers on this side of the frontier. This is an evident mistake. What we have consented to is only that the Bulgarians should not be bound to respect the neutral zone of one kilometer on each side of the frontier which was established in fact in the beginning of our mobilization, and that in the sector of Ali Boutous—Seimen-Kayassi we would withdraw our troops to a distance of one to two kilometers on this side of the frontier; therefore, the Germano-Bulgarians can carry on operations there up to the frontier, but without crossing it. Consequently, the Bulgarian advance to Vetrina and Lehovo,

far from being in accordance with the agreement, is an evident violation of it. Our officer of the boundary line explained to the Bulgarian commandant his mistake and told him that he tolerated him temporarily pending a friendly settlement between the two governments concerning the two occupations which have been wrongly effected, but that he would oppose by force any new advance.

Please explain the above to the Minister for Foreign Affairs and beg him kindly to see that orders are given to the Bulgarian troops operating in the frontier to evacuate the points occupied in our territory and to respect strictly the agreement entered into, in order to avoid incidents the consequences of which might be very regrettable.

SKOULOUDIS.

No. 48

Letter sent by Count Von Mirbach-Harff, Minister of Germany at Athens, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs.

ATHENS, May 9/22, 1916.

(Received May 10/23, 1916).

Mr. President of the Council:

In consequence of the aggressive measures recently undertaken by the troops of the Entente, Germany and her Allies are obliged to enter Greek territory in order to insure the free passage of the most important narrow passes of Roumel. This is solely a purely defensive measure due exclusively to the movements of the military forces of the Entente, which will be maintained within the limits necessitated by purely military interests.

Proceeding from this point of view, the Imperial Government of Germany does not in any way hesitate to give to the Royal Hellenic Government the following assurances:

(1) The territorial integrity of the kingdom will be absolutely respected.

(2) The Allied troops will evacuate Greek territory as soon as the military reasons requiring this action shall cease to exist.

(3) Greek sovereignty will be respected.

(4) Personal liberty, private property and the existing religious conditions will be respected.

(5) Any damage caused by the German troops during their stay in Greek territory will be indemnified.

(6) The Allies will deport themselves in an absolutely friendly manner towards the population of the country.

Please receive, Mr. President of the Council, the assurances of my high consideration.

MIRBACH.

No. 49

Letter sent by Mr. G. Passarof, Minister of Bulgaria at Athens, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs.

ATHENS, May 9/22, 1916.

(Received May 10/23, 1916).

Mr. President of the Council:

Bulgaria and her Allies are obliged, on account of the aggressive movement of the troops of the Entente, to insure to themselves the free passage of the most important narrow passes of Roupel and for that object to effect the advance of their troops in Greek territories. It is merely a purely defensive measure which has been rendered necessary by the actions of the Entente, and which will be strictly limited to the military necessities.

The Royal Government of Bulgaria begs furthermore to make to the Royal Government of Greece the following declarations:

(1) The territorial integrity of the kingdom will be absolutely respected.

(2) The Allied troops will evacuate Greek territory as soon as the military reasons requiring this action shall cease to exist.

(3) Greek sovereignty will be respected.

(4) Personal liberty, private property and the existing ecclesiastical *status quo* will be respected.

(5) Any damage caused by the Bulgarian troops during their stay in Greek territory will be indemnified.

(6) The Allies will deport themselves in an absolutely friendly manner toward the population of the country.

Please receive, Mr. President of the Council, the assurances of my high consideration.

G. PASSAROF.

No. 50

Letter of Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to Count Von Mirbach-Harff, Minister of Germany at Athens.

ATHENS, May 10/23, 1916.

Mr. Minister:

I have received the communication under yesterday's date which Your Excellency honored me by transmitting in order to inform me that in consequence of the aggressive measures recently undertaken by the troops of the Entente, Germany and her Allies are obliged to enter Greek territory in order to insure the free passage of the most important narrow passes of Roupel; that this is solely a purely defensive measure due exclusively to the movements of the military forces of the Entente, which will be maintained within the limits necessitated by purely military interests; that proceeding from this point of view, the Imperial Government of Germany does not in any way hesitate to give to the Royal Hellenic Government the following assurances:

- (1) The territorial integrity of the kingdom will be absolutely respected.
- (2) The Allied troops will evacuate Greek territory as soon as the military reasons requiring this action shall cease to exist.
- (3) Greek sovereignty will be respected.
- (4) Personal liberty, private property and the existing religious conditions will be respected.
- (5) Any damage caused by the German troops during their stay in Greek territory will be indemnified.
- (6) The Allies will deport themselves in an absolutely friendly manner towards the population of the country.

I take note of all the assurances contained in that communication, and beg Your Excellency to accept the assurance of my high consideration.

SKOULODIS.

No. 51

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to Mr. G. Passarof, Minister of Bulgaria at Athens.

(Letter)

ATHENS, May 11/24, 1916.

Mr. Minister:

Acknowledging receipt of your communication of yesterday's date, I have the honor to bring to your knowledge that I take note of all the declarations contained therein.

Please accept, Mr. Minister, the assurance of my high consideration.

SKOULODIS.

No. 52

Mr. N. Theotoky, Minister of Greece at Berlin, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

(Telegram)

BERLIN, May 13/26, 1916.

I have reasons to believe that we should have in view the probability of an impending advance of the Germans and Bulgarians in the narrow passes of Roupel.

THEOTOKY.

No. 53

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to the Royal Legations at Berlin, Vienna and Sofia.

(Telegraphic Circular)

ATHENS, May, 14/27, 1916.

Yesterday afternoon German and Bulgarian detachments crossed our boundaries at Koula, to the north of Demir-Hissar, and attempted to occupy the fortress of Roupel, the garrison of which resorted to force in order to hold its position. Other detachments, consisting of 25,000 men, coming down this morning from the sectors of Tsingheli and Vetrina, occupied the heights toward Demir-Hissar and the bridge of Strouma. They also took possession of the wooden bridge of Demir-Hissar. The population of this region is panic-stricken and is preparing to emigrate *en masse*, for it still retains the sad memory of the Bulgarian persecutions of 1912 and 1913.

This irruption into Greek territory is contrary to the agreement entered into between the German and Bulgarian military authorities and our own, according to which their troops, having been released from the obligation of observing the neutral zone which has been established since the mobilization, could advance up to the boundary line but not cross it. In face of the excitement caused by the above mentioned invasion, both amongst the populations of the invaded regions and the public opinion of the whole of Greece, the Royal Government is bound to protest in the strongest manner to the Imperial German Government and to those of its Allies, and to insist

that orders be given to evacuate as soon as possible the Greek territory invaded by the German and Bulgarian troops.

Please proceed without delay to a firm representation in the above sense to the government to which you are accredited, and acquaint me immediately with the result.

SKOULODIS.

No. 54

Letter sent by Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, (1) to Count Von Mirbach-Harff, Minister of Germany, (2) to Mr. J. Szilassy, Minister of Austria-Hungary, (3) to G. Passarof, Minister of Bulgaria, City.

Mr. Minister:

ATHENS, May 15/28, 1916.

The day before yesterday in the afternoon German and Bulgarian detachments crossed our frontier at Koula, to the north of Demir-Hissar, and attempted to occupy the fortress of Roupel, the garrison of which was obliged to resort to force in order to retain its position. Other German and Bulgarian detachments, consisting of nearly 25,000 men, penetrated yesterday in the sectors of Tsingheli and Vetrina and occupied the heights towards Demir-Hissar, as well as the bridges of Strouma and Demir-Hissar.

This sudden irruption of important forces into Greek territory not only constitutes a violation of neutrality, but is also contrary to the agreement entered into between our military authorities and those of the German and Bulgarian armies, according to which the troops of the Central Powers, having been released from the obligation of observing the neutral zone established since the mobilization, could advance up to the Greek boundary line but without crossing it.

In face of this violation of neutrality and the lively emotion caused by it, both amidst the populations of the invaded regions as well as the public opinion of the whole of Greece, I must send to Your Excellency for transmission to your government, the strongest protests of the Royal Government, and to insist that the German and Bulgarian troops evacuate as soon as possible the Greek territories invaded by them, begging you to transmit the present note to your government.

Please accept, Mr. Minister, the assurances of my high consideration.

SKOULODIS.

No. 55

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, to the Royal Legations at Paris, London, Rome, Bucharest, Petrograd and Constantinople, and the Consulate General at Bern.

(Telegraphic Circular)

ATHENS, May 16/29, 1916.

I have the honor to inform you that in the afternoon of the 13th of this month, German and Bulgarian detachments crossed our frontier at Koula, to the north of Demir-Hissar, and attempted to occupy the fortress of Roupel, the garrison of which was obliged to resort to force in order to hold its position. Other German and Bulgarian detachments, consisting of nearly 25,000 men, penetrated the next day in the sectors of Tsingheli and Vetrina and occupied the heights towards Demir-Hissar, as well as the bridges of Strouma and Demir-Hissar.

In face of this violation of Greek territory, the Royal Government addressed yesterday evening to the Governments of Germany, Austria and Bulgaria a strong protest and demanded that the German and Bulgarian armies evacuate as soon as possible the Greek territories invaded by them.

You may communicate the above in your next conversation with the Minister for Foreign Affairs, but without calling on him specially or giving him a copy.

SKOULOUDIS.

No. 56

Mr. G. Theotoky, Minister of Greece at Berlin, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

(Telegram)

BERLIN, May 17/30, 1916.

A communiqué of the General Staff announces only today the advance of the German and Bulgarian troops to the narrow passes of Roupel as follows:

German and Bulgarian forces, in order to insure themselves against the sudden attacks which the troops of the Entente were intending to undertake, occupied the cluster of the narrow passes of Roupel, near the Strouma. The weak Greek outpost withdrew on account of numerical superiority. The sovereign rights of Greece have been respected.

THEOTOKY.

No. 57

Mr. L. Coromilas, Minister of Greece at Rome, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

(Telegram)

ROME, May 17/30, 1916.

I have seen some persons of high standing since the telegrams from Greece and Sofia announced the invasion of our territory by the Bulgarians with fifes and drums, occupying our outposts and villages, following step by step our soldiers who have withdrawn without resistance. The impression which it made here is deplorable. And that because they remember the declaration made by us a while ago that we would never allow our hereditary enemy, — from whom we can expect nothing but misfortunes and ruin, — to cross our frontier and to tread as conquerors the soil of Greece. Many persons ask what value have our assurances; and the Italians are ready to believe that, as in Macedonia, so also in Epirus, we shall retreat before the Bulgarians, with or without the Austrians, and that it is better that no account whatever be taken of us, of our deceitful promises, and of our imaginary guarantees. Bulgaria, having at the head a German Marshal, who is her own king, invaded Greece under auspices of which she could never have dreamed; she will never depart from there, unless we have the force to throw her out of our territory, and this force they do not see either in our will or in our army. If she is defeated, she will be defeated by others than us; if victorious, she will drive in again and firmly erect her flag on the very spots which she has drenched with Greek blood in her old massacres, and very delusive is the hope that they would dislodge her in favor of those who have not fought.

COROMILAS.

No. 58

Mr. D. Caclamanos, Chargé d'Affaires of Greece at Paris, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

(Telegram)

PARIS, May 19/June 1, 1916.

The impressions of the French Government on the invasion of Greek Macedonia were communicated to me by the Director of Political Affairs in a long conversation with him, which was as follows:

Mr. Margerie told me that public opinion was under the impression that the events which have taken place during these last days are the result of an agreement between Greece and the Central Powers. Furthermore, information from German sources confirms this impression. As for the French Government, it is disposed to accept the explanation that considerations of defense had led the Bulgarians to occupy strategical positions such as the narrow passes which the fortress of Roupel commands, but the advance of the Bulgarian army into the interior of Greek Macedonia, the occupation by it of the environs of cities coveted by Bulgaria, the possible march of the Bulgarians on Cavalla, must necessarily lead it to draw the natural conclusion that Greece must have received assurances guaranteeing the restitution of these regions, of the value of which assurances she ought not to have the slightest illusion.

In any case, the situation has radically changed by reason of the Bulgarian advance. In fact, Greece, by her passive attitude in the face of an invasion which might weaken the military situation of the Allies, appears to be abandoning her policy of benevolent neutrality, and, consequently, the Entente can not but resume the necessary freedom in order to insure the preponderance of its armies acting in the Balkans. This freedom has reference as much to military operations as to measures of internal police, and General Sarraill has to that effect received orders giving him an extent of action larger than heretofore.

In my conversation with Mr. Margerie, I did not fail to make use of the information transmitted to me by your telegram.¹

CACLAMANOS.

No. 59

Mr. D. Panas, Minister of Greece at Petrograd, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

(Telegram)

PETROGRAD, May 21/June 3, 1916.

The Director of Political Affairs, speaking to me on the situation in Greece, told me today that in France and in England they are much irritated against us and that in official circles here there is the impres-

¹ See document No. 55.

sion, if not the conviction, that the occupation of Roupel and the advance of the Bulgarians in Macedonia, to which Greece has consented, prove the existence of a preliminary agreement with Bulgaria. They combine these facts, upon which they comment very much. with the interview of General Dousmanis, published in April by a Swedish newspaper, a telegraphic summary of which, by a surprising coincidence, was only transmitted here yesterday. I hastened to explain to the Director that there was no truth in any of that, and that he could not pass upon the policy of a government on mere suppositions and attribute to it a design which it never had. As the words of the General have probably been distorted by the newspaper, I think it would be proper to make, as soon as possible, a categorical denial of the declarations attributed [to him].

I understand that the withdrawal of the guarantees which were given to us at the time of the temporary occupation of our territories is now the subject of an exchange of views between the Entente Powers and we may expect coercive measures.

I must add that the Director is in constant touch with the Minister for Foreign Affairs and reflects in his conversations the views of his chief.

PANAS.

No. 60

MINUTES OF THE BOULÉ OF THE HELLENES

53d Session of May 23/June 5, 1916.

(Extract)

The sitting having been resumed, Mr. E. Skouloudis, the President of the Government, communicated to the Boulé the following:

Since the suspension of the labors of the Boulé, serious events have taken place in our country which may be thus narrated:

On the 13th of May at 12 o'clock noon, the Ministry of War received from the commander of the 4th Army Corps at Cavalla, a telegram according to which the 6th Division reported to the 4th Army Corps at 11:45 p.m. that a mixed column of Germans and Bulgarians had informed our battalion near Roupel that it would enter our territory. The 4th Army Corps added, that in accordance with the previous orders of the Ministry, the 6th Division ordered our detachments at Roupel to resist by force the advance of the Germans and Bul-

garians. The same hour, 12 noon, the Ministry of War received a telegram from the 3d Army Corps stating that the outposts of the company of Vetrina (in the narrow pass of Roupel on the other shore of the Strouma) had reported that a detachment of the German army, led by German officers, surrounded our outposts and declared it would enter our territory in order to occupy some important positions. In answer to the reply of our men that they had orders to resist, the commanding officer declared that he would occupy the heights at any cost, and at the same time other German detachments were crossing the boundaries with convoys. At 1:20 P.M. another telegram was received from the 4th Army Corps according to which two Bulgarian or German regiments drew up in battle array opposite Hodjogo (to the north of Roupel) and German troops entered our territory in the sector of Topolnitsa. On the other hand, from the telegram of the commander of the Roupel fortress which did not reach here until 11 at night, it follows that the German and Bulgarian forces who crossed our frontier had commenced to appear at 9:45 P.M. At 5:40 P.M. of the same day, on the 13th of May, the Ministry of War received a telegram from the commander of the fortress of Salonika, according to which the Germans and Bulgarians, throwing the responsibility for the occurrences upon the Greek army, crossed the boundary line at 2:30 P.M. and proceeded to the slopes of the fortress Roupel. The fortress fired twenty-four artillery shots at them. At the same time a telegram was received from the 4th Army Corps, according to which the covering infantry had also commenced to fire against the invaders, who stopped.

At 1:00 o'clock in the morning of the 13th to the 14th a telegram was received from the 6th Division, according to which the commander of the Germano-Bulgarian troops opposite Roupel declared to the commander of the fortress that it must be evacuated during the night because it would at all events be occupied by them. Under these circumstances, the government, seeing on one hand the determination of the invaders to occupy the fortress, and, on the other hand, that the continuation of armed resistance was likely at any moment to be transformed into a general clash, and lead to the abandonment of the policy of neutrality — which it does not intend to abandon, — ordered, through the Ministry of War, first, the cessation of resistance, and later that a declaration should be made to the German commander that in view of the general invasion of the German army in the narrow

pass of Demir-Hissar, inside of which the fortress is located, the garrison of the fortress was obliged to withdraw, carrying with it all the war material in the fortress. Since the evening of May 13th our military authorities had lodged protests against the Germans and Bulgarians. On May 15th, at 2:00 p.m. the Ministry of War received a telegram from the commander of the fortress of Salonika, bearing date of the previous day, according to which on May 14th, at 9:45 p.m., namely, twenty-four hours after the first appearance of the invasion, our commander had departed from Roupel; that the garrison had taken with them the heavy guns and all the field guns, except two of which they took away the breechblocks, a sufficient number of infantry cartridges, all the sanitary material, and the gun sights, regulators, all tools of the engineering [corps], dynamite, gun-powder and the quick firing guns. A German officer by the name of Thiel occupied the fortress and drew up a protocol for the remaining material and the two field guns, which are to be restored. A more recent telegram from the 6th Division, dated May 15, reported that the war material of the Roupel fortress had been transported to Serres.

On May 14 the government hastened to protest, in the strongest manner, to the Governments of Germany and her Allies against these events. The same day, after this protest had been sent, a telegram was received from the Minister of Greece at Berlin, dated the previous day at 8:00 p.m., namely, the 13th day of May, in which the minister informed the government that "he had reasons to believe that we should have in view the probability of an impending advance of the Germans and Bulgarians in the narrow passes of Roupel."¹ From this telegram it is seen that the fact of the invasion, which commenced on the morning of May 13th, was not communicated to the minister at Berlin up to the evening of the same day.

On May 17th, the following official communiqué of the German General Staff was published in Berlin:

German and Bulgarian forces, in order to insure themselves against sudden attacks from the Entente troops, occupied the cluster of the narrow passes of Roupel, near the Strouma. The weak Greek garrisons withdrew on account of numerical superiority. The sovereign rights of Greece have been respected.²

The documents exchanged between our officers and the invaders, the protests and protocols, as well as the detailed reports of our

¹ See document No. 52.

² See document No. 56.

officers, have not yet been received on account of the interruption of safe communications, which interruption also made telegraphic communication difficult during those days.

That is the manner in which the occupation of the narrow passes of Roupel took place. From this report it is evident that the various reports, which were intentionally circulated in order to slander Greece, that she acted perfidiously towards the interests of the Entente and in a partial manner in favor of their adversaries, were baseless. In view of such reports, I must declare and affirm in the most categorical manner that what happened was not due to an understanding with the Greek Government and that the Greek Government did not acquiesce in nor tolerate them, the proof of which is that the fortress of Roupel fired shots against the invaders.¹

The reports maliciously circulated that the office of the General Staff or any other office of the government, had, as alleged, come to a previous understanding with the Germans and Bulgarians that Roupel should be surrendered to them, are unworthy of a denial or even of a simple answer. No service, either the service of the General Staff or any other, acts without proper direction, but all the services act under the orders and responsibility of the government.

On the other hand, I should not omit to say that the character of the action of the Germans and Bulgarians who invaded Greek territory, according to the declarations which were made concerning it, permits the government to give the assurance that it is an act which has been done with an absolutely military object in view and which does not in the least endanger the integrity or interests of the country. (Applause.)

No. 61

Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs to the Royal Legations at Paris, London, Rome and Petrograd.

(Telegraphic Circular)

ATHENS, May 24/June 6, 1916.

From the time of the occupation of Roupel by the Germano-Bulgarian detachments, although the surrender of this fortress was a necessity imposed by the policy of neutrality followed by Greece, —

¹ See documents Nos. 48, 49, 50 and 51.

a policy which in no way implied armed resistance when detachments belonging to the Powers enemies of the Entente decided to occupy the positions which seemed to them to be necessary, — the most malicious reports have been circulated in regard to our attitude in that matter. The opponents of the government and the strangers who are interested in seeing the relations between Greece and the Entente Powers embittered have not hesitated to affirm that the surrender of Roupel fortress was agreed upon beforehand between the Royal Government and the enemies of the Entente, in order to injure the military security of the army of General Sarraïl or the success of his future operations.

For that reason I deemed it necessary to refute these slanders by the declarations I made yesterday in the Chamber, of which a summary in extenso was transmitted by telegraphic agencies.¹

Please take advantage of your first conversation with the Minister for Foreign Affairs in order to repeat to him the official assurance, that it is absolutely false that the Germano-Bulgarian troops occupied Roupel in consequence of any agreement whatever; that on the contrary, the garrison in the beginning resisted by force the advance of the detachments in question, and that it was only after the declaration made by their chief to the commander of our fortress that if he did not withdraw during the night, Roupel would be occupied by force, that the government, in order to avoid an armed conflict which would have resulted in the abandonment of neutrality by Greece, gave the order for the evacuation of the position. You should add that the governments of the Entente should not allow themselves to be deceived by these slanderous maneuvers, against which both my predecessors and myself were obliged to contend. Thus, under the Zaïmis Ministry, the Royal Legations at Bucharest and at London had advised us that in diplomatic and press circles the report was persistently circulated that an agreement had been made between Greece and Bulgaria about the cession of Ghevgheli and Doiran, and on other questions. Mr. Zaïmis had hastened to deny these reports and to denounce these maneuvers aimed to compromise Greece in the eyes of the Entente. Several times the Bulgarian and Austrian newspapers have published similar news, trying to compromise the members of the Royal Government or the Greek representatives abroad, by publishing so-called interviews which were alleged to have been given

¹ See these declarations in No. 60.

by these persons to correspondents, but which were a tissue of lies. The Allied Governments were finally each time convinced of the untruthfulness of these reports, which were certainly inspired by malice. I hope that this time also it will be the same, after the declarations which were made by the Royal Government before the Chamber and which you are instructed on its behalf to communicate to the Minister for Foreign Affairs.

SKOULLOUDIS.

No. 62

Mr. D. Caclamanos, Chargé d'Affaires of Greece at Paris, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

(Telegram)

PARIS, *May 24/June 6, 1916.*

I have just had a long conversation with Mr. Briand, to whom I handed a note containing the protest which was contained in your telegram and stating our point of view as to the interpretation given by us of our benevolent neutrality towards the Entente. I have also verbally explained to the President of the Council that a neutrality, no matter how benevolent it might be, can not involve military [action] against one of the adversaries, because it would then cease to be a neutrality. The President of the Council, after having carefully read the note which was handed to him, entered into a discussion which may be summed up as follows:

The proclamation of martial law in Salonika was the result of the decision [of Greece] not to oppose the invasion of her territory by the Bulgarian army, for it is only the Bulgarian army that is in Greece, the Germans not having available forces for that purpose. In taking this step, General Sarrail informed General Moschopoulos that the holiday of His Majesty the King could be celebrated as usual, and it was the latter who revoked the order for the celebration. As for the want of previous notification to the Royal Government, the latter had been often advised, and in any case, the communication of Mr. Guillemin took the place of such notice.

Mr. Briand repeated to me that the attitude of Greece surprised him the more inasmuch as the Royal Government had often declared that it had received assurances that the Bulgarians [would not invade] Greece. He took a special note of our express denial that there had

been no previous agreement between Greece and the Great Central Powers for the occupation of the fortress of Roupel. He added that, if the Bulgarians advance, General Sarraïl "would take all the measures which would seem to him to be proper in order to guarantee the security of the troops under his command." The President of the Council could not tell me what these measures might be, but that in no case could the Allied troops be exposed to danger [words illegible] by reason of the passive attitude of Greece. According to Mr. Briand [words illegible], the aim of the Bulgarians was more than evident. Holding Serbian Macedonia, they wished to hold also the [words illegible] in Eastern Macedonia in order to arrange "combinations" in the future. He assured me that for some time past, they had attempted through various agents to lure the Powers of the Entente into negotiations. Holding the keys of the gates which lead to Serres, Drama and Cavalla, they [the Bulgarians] may reach there whenever they consider the moment favorable. If they do not advance now, it is because their flank would be exposed to the attacks of the Allies.

CACLAMANOS.

No. 63

Mr. D. Caclamanos, Chargé d'Affaires of Greece at Paris, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

(Telegram)

PARIS, May 24/June 6, 1916.

The serious phase in which our relations with the Entente have entered, impose upon me the duty to summarize as briefly as possible the situation as it is here regarded, and developed from my official or other conversations, as well as from all the newspaper editorials of these days [which I transmit to you], in order that Your Excellency may have all the necessary elements for the explanation of the sentiments of official circles and public opinion in France.

First of all, one should note that the attitude of Mr. Briand is dictated by considerations of both an external and internal character. In fact, since the invasion of Greek territory by the Germano-Bulgarian forces without any effective resistance from us and the consequent conviction which has been formed here that an agreement exists between Greece and the Central Powers, the President of the

Council seems to be haunted by the memory of the previous discomfitures caused by the Bulgarians, and to believe that he might be exposed to similar disappointments from us. In order, therefore, to defend himself against any subsequent charge that he has shown too much benevolence towards Greece, he is beginning to take rigorous measures of which I fear the proclamation of martial law in Salonika is only a prelude. The phrase uttered by a journalist, "if Ernest Renan was watching over the Acropolis, all that would not have happened," is sufficiently characteristic, and official organs do not cease to amplify on the subject that the Germans only know how to appear strong and that the Orientals are only impressed [by] force.

The belief that the occupation of the Roupel fortress was agreed upon between Greece and the enemies of the Entente was not given credence by the telegrams of the "Exchange" agency, which you instructed me to deny simultaneously with the denials transmitted directly from Athens through the agencies and published in the French press, but by information which was given out by the *Neueste Nachrichten* of Munich which alleged that an agreement between Greece and Bulgaria existed not only on the question of the invasion of Greek territory, but also on the other disputed questions between the two countries. It is this information to which Mr. Margerie alluded during our conversation the other day,¹ and the officious *Wiener Allgemeine Zeitung* has just published news which is considered here as a confirmation of it.

I will add that the French Government, although thinking perhaps that Greece could not have opposed by force the invasion of her territory by the Bulgarians, hoped, however, as I positively know, that she would have prevented the invasion through diplomacy, because of the excitement which such action would cause in Greece. Disappointed in this hope, he concluded that definite agreements bound Greece with the Central Powers of such importance that even the occupation by the Bulgarian army of the Macedonian regions coveted by Bulgaria could not disturb her. We should not overlook that the excitement of a portion of the Italian press does not remain without effect. Thus, its charge that the new loan furnished by the National Bank was only made possible through the assistance of German-American financiers, is beginning to receive wide publication here and naturally it adds to the excitement of French public opinion.

¹ See document No. 58.

No. 64

Mr. G. Passarof, Minister of Bulgaria in Athens, to Mr. E. Skouloudis, President of the Ministerial Council, Minister for Foreign Affairs.

ATHENS, May 27/June 9, 1916.

Mr. President of the Council:

In reply to Your Excellency's letter dated May 15th last, concerning the occupation by the German and Bulgarian troops of the fortress Roupel, the heights and the bridge of Demir-Hissar, as well as of the bridge on the Strouma, the Royal Legation of Bulgaria, in the name of its government, has the honor to bring to the knowledge of the Hellenic Government that these military operations were imposed as a natural measure of security and legitimate defense against the considerable advance of the troops of the Entente on Greek territory in the section opposite the above mentioned places, an advance which will evidently be followed by an attack.

The Royal Government of Bulgaria begs to declare that imminent danger compelled it to act thus in the circumstances, and that the measure which was adopted will in no way impair the sovereign rights of Greece.

Please accept, Mr. President of the Council, the assurances of my high consideration.

PASSAROF.

No. 65

Memorandum of Service of the General Director of the Ministry for Foreign Affairs.

ATHENS, June 7/20, 1916.

The official documents of the Bulgarian Government which have come into the possession of the Ministry concerning the surrender of the Roupel fortress do not make any mention about restitution. They confine themselves to the declaration that this occupation will not impair the sovereign rights of Greece. But, as the President informed me that he is in possession of documents pledging the restitution of the fortress by Germany and by Bulgaria, I begged him a few days ago to place these documents in the official files of the Ministry. The President answered me that he would do so in due time. Today I reminded him again of the necessity of such a filing, as well as the recording of the protocol of the surrender of the fortress Roupel, a protocol which has not yet been received in the office. The President again repeated the promise that he would file these documents.

No. 66

*Letter of Mr. E. Skouloudis to Mr. N. Politis, General Director
of the Ministry for Foreign Affairs.*

ATHENS, June 8/21, 1916.

Dear Mr. Politis:

I am sending you, herewith attached, for the Ministry for Foreign Affairs, two documents dated May 9/22 ultimo, the one from the German, the other from the Bulgarian, Legations here, and my answer to them.¹ As you will notice, the said Legations in presenting these documents characterized them as secret; but afterwards, at my request, the Minister of Germany informed me, by order of his government, that the characterization of secrecy was withdrawn and that we could make use of the said documents whenever we wished.

With high esteem,

E. SKOULODIS.

No. 67

*Extract from the Confidential Record of the Ministry for Foreign Affairs
for the year 1916.*

Number of order	Entered		Date of recording	Forwarding authority	Summary of docu- ment entered
	Date	Number			
7242	August 9	7147	9 August	German Legation	That the Germano-Bulgarian troops will not enter in the cities of Drama, Serres and Cavalla. ²

¹ See documents Nos. 48, 49, 50 and 51.

² This document was not found in the archives of the Ministry.

No. 68

*Letter sent by Count Von Mirbach-Harff, Minister of Germany at Athens,
to Mr. A. Zaïmis, President of the Ministerial Council,
Minister for Foreign Affairs.*

ATHENS, August 15/28, 1916.

Mr. President of the Council:

Referring to the communication which Mr. Caradja was pleased to make to me in your name last Tuesday, I have the honor to bring to the knowledge of Your Excellency that the situation in the district of Cavalla has since been modified by the fact that the Greek troops voluntarily surrendered to the Bulgarians the forts and batteries in question. An inventory of the material found there on that occasion was made by both parties.

The Bulgarians have been stationed around the city but outside of its suburbs. General Jekoff took the necessary steps to insure the revictualling of the population as well as the Greek troops.

Please accept, Mr. President, the assurances of my high esteem and devoted and sincere sentiments.

MIRBACH.

No. 69

*Report of Lieutenant-Colonel Troupakis, Superior Commandant of the
Gendarmerie in Macedonia to the Ministry for Foreign Affairs
(Direction of Political Affairs), Athens.*

SALONIKA, August 28/September 10, 1916.

I have the honor to report that, after the invasion of the Bulgarians in Eastern Macedonia and its occupation by them, both the postal and telegraphic communication were interrupted, and consequently my office has not been able since the 5th ultimo to communicate with the police precincts of Serres and Drama, which are under our office, and is ignorant of what has and is happening in the jurisdiction of said precincts at the expense of the inhabitants and the military and other authorities.

Only yesterday the police volunteers of the second class, namely, Joannes Tsikrikontis, Apostolos Chryssafides, and Apostolos Bozadjis, of the police precinct of Drama, having arrived here via CavaLa and Thassos, appeared before me and reported that the Bulgarians are

committing outrages at the expense of the Greek authorities, not omitting anything to show their inimical disposition and criminal instincts, and that the Bulgarians have in substance committed the following acts:

(1) On the night of the 6th to the 7th ultimo, the Turkish inhabitants of the district of Doxato, encouraged by the Bulgarian troops who invaded that district, and enraged against everything Greek, rebelled and attacked the Greek inhabitants and the men of the flying column under the command of Adjutant Constantine Limberi. An encounter followed which caused the death of two Turks and the capture of twenty-eight, of whom thirteen were freed by force from the prisons by the Bulgarian soldiers of Doxato. Sergeant Panazotis Demetracopoulo of the flying column was slightly wounded on the left foot.

(2) From the 8th to the 9th of the same month, seven gendarmes of Sarnitz Post and Sergeant Tryphon Yannari, the chief of the post, including Sergeant Stamatios Chrysafides, were killed by the rebel Turks and the Bulgarian *comitadjis*.

(3) At Oxilar, four gendarmes whose names are not known were killed, together with eleven soldiers and a sergeant with their lieutenant.

(4) On the 10th ultimo, the gendarme Demetrios Papas with his comrade Athanassios Amaxopoios of the police sub-precinct of Sarisaban, while accompanying the public treasurer of Keramiti, were attacked by Bulgarian soldiers, in the course of which Papas was killed and Amaxopios severely wounded in the shoulder-blade, as I reported also in my letter of the 12th ultimo.

(5) The gendarmes of the flying column of Prosotsani and the commander of the flying column, Adjutant Constantine Gali, were disarmed and insulted by Bulgarian soldiers; having been re-armed by the police precinct of Drama, they were again disarmed and, after being beaten, were ordered to return to Drama.

(6) The Turks of the district of Moustratli, immediately after the invasion of the Bulgarians, were armed and attacked the men of the police post, whom they would have killed had they not succeeded in escaping. The Turks entered Doxato and proceeded to plunder and exterminate the Greek inhabitants, which provoked an encounter with the gendarmerie, as is mentioned in the first paragraph of the present report.

(7) The refugee inhabitants of Yennikeyu and Dariovi, in order to escape the fury of the Bulgarians, fled to Cavalla, but on their way they were robbed by the Turkish rebels.

(8) The gendarmes of all the sub-precincts and posts of the police precinct of Drama were disarmed and those who were not killed were beaten and sent to Drama in very bad condition.

(9) Three gendarmes of the police sub-precinct of Pravi, while escorting two Turks to Cavalla, who were accused of robbery, were attacked on their way by Bulgarian soldiers. Their fate is unknown.

(10) The Bulgarians sent word from Drama to Cavalla, where there was a dearth of provisions, that fifty carts should be sent to them, in order that [provisions] may be sent there. These were sent in the custody of three gendarmes and three soldiers. They [the Bulgarians] cut the finger ends of both hands of one of the soldiers, and disarmed the gendarmes and sent them to Cavalla.

(11) The chief, Comitadji Panitsa, at the head of *comitadjis*, goes about freely in the District of Drama, robbing, killing, etc.

(12) All the Bulgarian and Turkish inhabitants of Eastern Macedonia, assisted by the Bulgarian army, kill the Greek inhabitants, and plunder and destroy their properties; the latter, in face of the danger which hangs over them, flee panic-stricken to Cavalla and from there to Thassos, leaving everything at the mercy of the murderers and persecutors, the Greek authorities not being in position to afford them the slightest help. Thus Eastern Greek Macedonia is at the absolute disposal of the hereditary enemies of the nation.

TROUPAKIS.

No. 70

*Mr. A. Naoum, Minister of Greece at Sofia; to Mr. E.
Zalocostas, Minister for Foreign Affairs, Athens.*

(Telegram)

SOFIA, December 5/18, 1916.

I am informed by a subordinate official of ours who came from Serres, that many notables had been either imprisoned or expelled from there, and that Bulgarian night-patrols have entered houses and plundered them. The population is suffering from the terrible high prices and the rudeness of the Bulgarians, and there is not a single German officer to supervise the Bulgarian administration. The roofs

of the military barracks and the School of Agriculture were removed in order to furnish timber for the construction of trenches. It is said that after the deportation of the population of the district of Bairacli-Djoumaza because of military necessity, Bulgarian soldiers, according to the orders they had received, plundered houses and carried to an unknown place the spoils of their plunders. The above mentioned city was completely destroyed by the bombardment and the population was transferred to Pozarevitch. I am informed from Drama that the Greek authority exists only in form. Taneff, the military governor, dismissed the Greek mayor of Cavalla, with all the municipal council, and replaced him by a Turk. Lastly, the mayors of the villages were dismissed and Bulgarians and Turks were appointed in their places. In some villages the churches and the schools were taken possession of, and the Bulgarian language started to be taught. Many plunderings and forced contributions [without] payment have taken place and it is said that the village of Nea Midia was completely destroyed and the inhabitants murdered. Many of our compatriots from Drama and Cavalla [words illegible] are detained as prisoners. The native Turks in the beginning plundered many villages and killed a good many of the Christian inhabitants. It seems that now some kind of order has begun to be established, but on account of the high prices of the provisions and the insufficiency of bread the population of the occupied places is suffering much. Plunderings did not take place in Drama, but in Cavalla all the houses have been forcibly entered into, and the movable properties will soon be transported to Sofia by special trains. The refugees of the district of Serres were taken by force to Drama, where they suffer immensely from hunger, and deaths from hunger were noted [words illegible]. The above mentioned refugees will be transported to Serbia for residence there. I have made the necessary representations to the Prime Minister concerning the above situation, and have telegraphed to the Royal Legation in Berlin in order that proper action might be taken.

NAOUM.

No. 71

Mr. E. Zalocostas, Minister for Foreign Affairs, to Mr. N. Theotoky, Minister of Greece at Berlin.

(Telegram)

ATHENS, December 13/26, 1913.

From the telegram of our minister at Sofia dated the 5th instant¹ you are informed about the horrible situation in which the inhabitants of our provinces occupied by the Bulgarians are found. Plunderings, thefts, destruction and even murders are the order of the day. Our populations, reduced to misery and starving, are decimated. The Greek churches and schools have been taken possession of by the Bulgarians, while the notables of our cities and villages have been thrown into prison.

We earnestly beg the German Government to take the most serious steps in order to put a stop to this deplorable state of affairs; particularly to take away from the Bulgarians the administration of the country and to entrust it to German officials.

You should tell the German Government it is inconceivable that, after having occupied or left to be occupied Eastern Macedonia, which is, indirectly, it is true, the cause of all the misfortunes from which Greece now suffers, after not keeping the express promises given in writing not to occupy the three large Macedonian cities and to respect individual liberty, private property and the religious *status quo*, it now leaves the Bulgarians free to exterminate the Hellenic element in Macedonia.

You should add that we have the right to expect from the Imperial Government radical steps for the security of our nationals in Eastern Macedonia, and of their properties, as well as those belonging to the State.

Please take immediately the above mentioned step and communicate the result to me. Please be guided by the present telegram without leaving copy of it.

ZALOCOSTAS.

¹ See document No. 70.

No. 72

*Mr. A. Naoum, Minister of Greece at Sofia, to Mr. E.
Zalocostas, Minister for Foreign Affairs, Athens.*

(Telegram)

SOFIA, January 1/14, 1917.

In continuation of my telegram of December 5th,¹ I have the honor to inform you that General Taneff, the military commander of the territories occupied in Eastern Macedonia, has just arrived in Sofia. In the course of the visit he paid me today, I explained to him at length the sad situation of our nationals, as I had already done in a note presented to the Bulgarian Government. General Taneff attributed some of the excesses which have been committed to the bad conduct of the Turks towards our people, and some to the disorder resulting from the entrance of foreign troops into our territory, but he nevertheless admitted that most of my remarks were well founded and promised to take all the necessary measures for the amelioration of the situation.

I will not fail to keep myself advised, as much as possible, concerning the situation of our nationals in occupied Eastern Macedonia, and to make, from time to time, the necessary representations.

NAOUM.

No. 73

*Mr. E. Zalocostas, Minister for Foreign Affairs, to Mr. A.
Naoum, Minister of Greece at Sofia.*

(Telegram)

ATHENS, January 5/18, 1917.

I thank you for the information contained in your telegram of the 1st instant.² Please follow closely this very serious question and report to me.

ZALOCOSTAS.

¹ See document No. 70.

² See document No. 72.

No. 74

*Mr. A. Naoum, Minister of Greece at Sofia, to Mr. E. Zalocostas,
Minister for Foreign Affairs, Athens.*

(Telegram)

SOFIA, February 15/23, 1917.

The Prefect of Drama telegraphs that on account of the anomalous situation created in his district and the want of work, the laboring class is sunk in misery. Many deaths are noted from starvation in Cavalla and in other parts of the province. In order to remedy this situation, I proceeded to establish in the principal places of the Province economical bakeries in order to distribute gratuitously at least bread to the hungry people; but, as in the district of Drama, besides the families without work there flocked thousands of refugees from those that had been installed by the Greek Government in the region of Serres, who were now forced by the Bulgarians, for military reasons, to leave that region. The maintenance of these economical bakeries by private initiative only has become impossible on account of the rise of prices of provisions. The Prefect, therefore, begs that the Royal Government approve a credit of at least 200,000 drachmas for their maintenance, in order to aid the starving populations, particularly those who in great numbers were already receiving an allowance from the commission for the establishment of refugees.¹

NAOUM.

No. 75

Report of a Superior Functionary of Eastern Macedonia, dated March 9, 1917, transmitted from Germany to the Ministry for Foreign Affairs, through the Royal Legation at Berlin.

I have the honor to report the following facts which I personally observed during my forced residence in Cavalla, or which were reported to me by reliable persons occupying high social position:

¹ This telegram was transmitted on February 25 to the Ministry of the Interior, which returned it on March 1, with the notice that the question should be submitted to the Ministerial Council. The Minister for Foreign Affairs wrote on the same letter of the Minister of the Interior as follows:

"When the financial situation will permit it. For the present to be classified.

ZALOCOSTAS."

On Tuesday, August 30, 1916, the very next day after the Greek troops of Cavalla left for Drama and Germany, the city was occupied by a Bulgarian company belonging to the forces stationed along the line of the fortresses of Cavalla. As soon as these troops entered [the city] their commander immediately assumed his duties of military governor of the city, placed sentinels at the doors of the public buildings and particularly at those of the depots of war material. The inhabitants, who had already prepared to leave Cavalla, and were gathered along the seashore, were ordered to return to their homes and take back with them their furniture and other things which were heaped up near the sea. No person was allowed to leave the city nor to communicate with the seashore. The Greek flag which was waving on the fortress was lowered and torn up by the Turkish population, who, immediately upon the arrival of the Bulgarians, hastened to renounce Greece and for reasons of interest declared themselves in favor of the cause of the Bulgarians, the allies of the Ottomans in the present war. A public crier warned all the inhabitants that they should remain in their homes from sunset until next morning with all lights extinguished.

After the settlement of these questions, Bulgarian commissary officers who came for that purpose took possession, without delay, of the depots of war material and transported them at night outside the city. The Bulgarian military governor filled the vacant position of mayor of the city by appointing Habi-Bei, a Turk, — who formed a municipal council composed exclusively of Turks, — (the Greek members of the council having been purposely imprisoned for some time as suspects).

Then the Bulgarians and Turks gave themselves to systematic plunder of the properties of the Greek population. All means were used; requisitions of goods which were found in the Greek stores, extortions of moneys; arbitrary confiscation of furniture and other things in the houses; artificial rise of prices, and the skilful and sordid increase of provisions and other articles of first necessity.

Although the lives of the inhabitants were then spared, the Bulgarians began to create during the first months of the occupation an atmosphere of terror in order to make the Greek inhabitants of the city apprehensive of all the dangers. Public order was, however, assured by the Bulgarian patrols, and except for some murders which were committed for robbery and attributed to Bulgarian and Turkish

soldiers (the latter, although claiming to be Greek subjects, were impressed into the army by the Bulgarians and enrolled in special companies), order was maintained. Yet during the first months of the occupation, the Bulgarian authorities were in general very distrustful towards the Greeks, whom they suspected of *Venizelism*, and particularly towards the military men. The latter were arrested and imprisoned by the Bulgarians and after being submitted to all kinds of humiliations were sent to Drama or Sofia. (Such was, for instance, the fate of Eustathios Faraclos, a retired commandant of the commissary department and a bookkeeper of the depot of trench material at Cavalla; of G. Botagas, a reserve sub-lieutenant of infantry, etc.) Similarly, the Greek postal and telegraph officials of Cavalla were removed from that city and sent to Drama, where they now are.

As there were no Greek authorities in Cavalla, the interests of the city were entrusted to Habi-Bei, the Turkish mayor, who, with his municipal council composed exclusively of Turks, resorted to large contributions not only from the municipal money but also from private properties. In consequence of this unrestrained plunder and the complete indifference to the consequences shown by the Turks and the Bulgarian military commandant of the city, the want was felt with an intensity only usual to cities which are subjected to a long siege. A general rise followed in the price of provisions and of articles of prime necessity which threw the inhabitants into complete disorder. Ten to fifteen deaths from starvation were noted, on an average, every day. The military authorities of the city were indifferent to the situation thus created, and thought only of getting possession of the state depots and big commercial houses whose owners had fled. Under the pretext of searching to discover articles for military use which, as it was alleged, the inhabitants had hidden, the Bulgarians in broad daylight literally ransacked the houses. This indifference of the authorities brought a considerable rise in the prices of things of first necessity, a situation of which the Turks and Jews hastened to take unlimited advantage, by reselling to the inhabitants goods which it was admitted by the authorities had been imported from Bulgaria at an average price.

The bread was a miserable mixture of wheat, trifling quantities of oats, rye, barley and other more or less doubtful substances, and was sold at 10 leva the okka (a Bulgarian money imposed on the market and arbitrarily made equal to the Greek drachma). Meat

and dry beans were sold at 8 to 12 leva the okka; cheese at 24 to 36 leva; butter or grease at 40 to 50 leva; salt at 12 to 20 leva; sugar at 60 to 80 leva; rice at 24 leva; vegetables at 4 leva; potatoes at 6 to 8 leva; wine at 8 leva; milk (always adulterated) at 4 leva; barley at 10 leva; eggs at 60 to 80 centimes each; leeks at 1 leva a bundle; charcoal at 1 leva the okka, etc.

After the spoliation of the depots, the Bulgarians, under the pretext of requisition, proceeded to all the large commercial stores, grocery stores (of Sertzos, etc.), hardware stores (Kakidjis, etc.), whose owners had left Cavalla panic-stricken a short time before the Bulgarian occupation. By order of the Bulgarian governor, squads or sections of companies commanded by officers and adjutants entered these houses under the pretext of search, as above explained. Taking advantage of the opportunity, the Bulgarian officers, besides taking military things in very small number, such as rifles, revolvers, covers, water receptacles, carried away, without giving any requisition receipts whatever, all the uniforms of the Greek officers of the garrison of Cavalla which had been left by their owners in their hurried departure (of August 28-29) in the houses or hotels of the city. Thus they [the Bulgarians] took away military articles, furniture and other valuable articles belonging to these officers and their families, particularly those of General Ghennadis, the commander of the 4th Army Corps (in a building occupied by the offices of the Army Corps), of General Hadjopoulos, commander of brigade (in the building of Serdaroglou, the mayor of Cavalla), of J. Costakis, chief of squadron, of G. Cordzas, C. Capodostria, and Coumoundouros, commandants of infantry, of the officers who lived at the Grand Hotel, and of numerous superior and subordinate officers who resided in Cavalla with their families. Any person wearing a military uniform or anything resembling one who was met by a Turkish or Bulgarian soldier was immediately stripped of his uniform and it was delivered to the depot, the sale of such things being strictly forbidden in the market.

The plundering of the city and the search being finished, Mr. Angheloff, a Bulgarian sub-lieutenant of the navy reserve, was appointed as its governor. He dismissed the Turkish mayor and appointed in his place Serdaroglou, a Greek who was assisted by a municipal council composed of Greeks. Thanks to the energetic measures adopted by Mr. Serdaroglou, the importation of flour and the distribution of bread by card, which was commenced during the

administration of the Turkish mayor in order to prevent a famine, became more intense. The quality of the bread was improved and aid to the poor was actively organized (distribution of bread and soup for the poor). In a word, the city of Cavalla felt a little relieved from the evils from which it had suffered during these last months. Still, a large number of the houses left by their inhabitants were plundered by the Turks, Jews and the refugees, who carried away whatever could be utilized (tiles, timber, doors, ceilings, glasses, iron things). This was admitted by the Bulgarians.

Finally, from the first day of the occupation the big military depot of material was occupied by the Bulgarian army, which utilized all the material for works of entrenchment executed both at Cavalla and in the line of fortresses of the city. The Bulgarians also seized all the timber found in the warehouse of the city of Cavalla which was destined for the construction of shelter for the refugees. They did not spare anything belonging either to the Greek state, to the community of Cavalla or to private individuals, which could be of some use to them. Some of these persons were sufficiently fortunate to see their goods appraised before they were requisitioned, but this appraisement represented but one-twentieth of the real value.

In Drama, where from the beginning of the occupation, Mr. Bakopoulos, the governor, Mr. Fessas, the Greek mayor, and other Greek officials remained in their posts, the Bulgarians extortions, as reported to me from a good source during my short residence in that city (9-18th February), were exacted on a smaller scale. The properties of the Greeks and the things belonging to Greek officers of the garrison of Drama were relatively spared by Bulgarians and Turks, and the population suffered less from the scarcity of provisions, thanks to the measures which were taken in time by the Greek authorities. Yet at Drama and in other localities the Bulgarians freely speculated in provisions by importing from Bulgaria all kinds of goods of prime necessity which were resold at exorbitant prices in the market of the city. Besides, these prices hardly differed from those mentioned above, in the market of Cavalla.

No. 76

*Mr. A. Naoum, Minister of Greece at Sofia, to Mr. E. Zalocostas,
Minister for Foreign Affairs, Athens.*

SOFIA, March 27/April 9, 1917.

I have the honor to submit to you, herewith attached, a copy of a more recent document, dated March 23d, to the Prime Minister, concerning the critical situation created in Macedonia by reason of the scarcity of provisions and particularly of bread.

In Cavalla, in consequence of the difficulties of transporting provisions from Drama and the lack of every care on the part of the Bulgarian military authorities for the organization of more or less regular communication between Cavalla and Drama, the inhabitants have for months suffered from the insufficiency of provisions, and particularly of bread, which is sold from 10 to 15 drachmas the okka. In the beginning such hardships were noticeable only in Cavalla, where a good many deaths occurred from starvation. But recently, and particularly during the last month, the crisis has extended generally to all parts of Eastern Macedonia, a great many deaths occurring from starvation not only in Cavalla, but also in Drama and Serres. Undoubtedly the same situation prevails in the various villages where the situation is unknown because the villagers are forbidden for military reasons to go from the villages to the cities, which certainly aggravates the crisis in provisions which was felt only in the cities. During the last forty days, 1,800 persons died from starvation only in Cavalla, according to official and reliable information which I received from there, and thirty persons a day, on an average, die in Drama. Two months ago the Bulgarian Government sent to Eastern Macedonia a quantity of wheat for the needs of the native population, and although that was not sufficient, yet it sufficed to relieve some of the population.

The wheat which was furnished was not given gratuitously, but the administration of Drama each time paid the price to the Bulgarian Government. But, for the last two months nearly, the quantity furnished has been gradually decreasing, until it has been reduced to 60 grams of bread daily for each person. Other things of first necessity are either totally wanting or are sold at exorbitant prices, which even the richest inhabitants can not afford to pay. Therefore,

during these last two months the situation in Eastern Macedonia has become critical and, in fact, desperate on account of the great many deaths from starvation which have occurred, [particularly] amongst the Greeks because the Turkish army has furnished provisions to the Mussulmans and the Bulgarians to the Slavic-speaking villages. In Drama and in some other cities, thanks to the initiative of the Greek Préfet and the praiseworthy financial aid of the rich, soup kitchens were established for the relief of the poor, but unfortunately these kitchens can not be operated regularly because provisions can not be found.

Concerning this desperate condition created in Eastern Macedonia, I have repeatedly made, both in writing and verbally, strong representations to the Ministry for Foreign Affairs here and to the Prime Minister, to whom I have addressed a strong protest against the destruction carried on in Eastern Macedonia. I reminded him of the express promises given to Greece for the safeguarding of the lives and properties of the inhabitants and called his attention to the deplorable impression which the policy of the Bulgarian Government would create in Greece, and which could not but influence public opinion there and the existing friendly relations between the two countries. Not satisfied with these steps, I called also on Mr. Dobrovitz, the Director of the Political Office of H. M., to whom I explained in the most detailed manner the deplorable situation in Eastern Macedonia, and begged him to bring all these [facts] to the notice of the King, in the hope that H. M. would intervene energetically with the Bulgarian Government for the amelioration of the situation. I protested strongly to Mr. Dobrovitz against the indifference shown in this matter by the Bulgarian Government and emphasized the fact that if this continues, it could not but considerably influence the relations between the two states. Mr. Dobrovitz pretended a complete ignorance of the situation but promised to transmit to H. M. the King all that I said to him.

I took also similar steps with the official German circles here and asked our Royal Legation at Berlin to take this matter up with the German Government.

NAOUM.

ANNEX

*Mr. A. Naoum, Minister of Greece at Sofia, to Dr. V. Radoslavof,
President of the Ministerial Council, Minister for
Foreign Affairs of Bulgaria.*

SOFIA, March 23/April 5, 1917.

Mr. President of the Council:

The Legation of His Hellenic Majesty has repeatedly by verbal and written representations called the serious attention of the Royal Government of Bulgaria to the critical situation in Hellenic Macedonia occupied by the Bulgaro-German troops, caused by the want of provisions and particularly of bread, and insisted on the absolute necessity and urgency of taking the necessary steps to remedy a really deplorable situation.

Unfortunately, up to the present time all my representations have brought no practical result, and, according to accurate information which I received, more than 1,800 persons have died in Cavalla from starvation within forty days; in Drama, about thirty persons die daily from the same cause, and the same deplorable occurrences are repeated in all the other centers of occupied Greek territory. Last month, hardly 60 grams of bread were daily distributed to each of the unfortunate inhabitants, who do not have any other food.

Reminding Your Excellency of the express obligations undertaken at the time of the entrance of Bulgaro-German troops into Hellenic Macedonia, I consider it my duty to inform you that, if this situation continues unabated and if no radical and urgent steps are soon taken, all the Hellenic population of the occupied places will be exterminated either from starvation or epidemic diseases.

In the presence of this desperate situation, I must raise my voice against these proceedings and neglects which daily cause the death of a great number of Hellenic citizens and will cause more in the future, and, placing the entire responsibility upon the Bulgarian Government, I insist with all my energy that, independently of all other considerations, and for reasons of humanity only, steps be taken and strictly carried out to put an end to a situation which, I am sure, Your Excellency is the first to deplore.

Please accept, Mr. President of the Council, the assurances of my high esteem.

NAOUM.

No. 77

Mr. A. Naoum, Minister of Greece at Sofia, to Mr. A. Zaïmis, President of the Ministerial Council, Minister for Foreign Affairs, Athens.

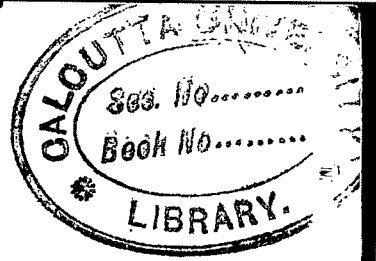
(Telegram) *Sofia, June, 1/14, 1917.*

The Bulgarian authorities in Eastern Macedonia recently notified the inhabitants who desire to go to the interior of Bulgaria to be established there, or to find work, that they should register in special registers. A large part of the population, suffering from want of food and dying from starvation, accepted the proposal and the transportation of them with their families to the interior of Bulgaria has begun, they being temporarily established at Tatar-Bazardjik, Kara-Bachli, Philippopoli, northern Bulgaria and in Dobroudja. These refugees who are arriving in large numbers are in a desperate condition on account of privations. It is said that in the registers of Drama alone 10,000 have been registered [words illegible], a step taken to render the population less dense in order to facilitate the revictualling of Macedonia and also to relieve the labor situation in cities and country in Bulgaria, where there is now a great dearth of laborers, but perhaps this measure is intended as a systematic removal from Macedonia of the Hellenic population, for political reasons, namely, [to effect] the extinction of the present Hellenic character of the country. It is not known whether Slavophones have emigrated, but about 5,000 Mohammedans have arrived in Bulgaria and some in Sofia. In consequence of the action of the Turkish consul at Philippopoli, they are to be sent to Turkey.

According to an official report, up to the 15th of April (o. s.) 6,000 persons had died from starvation in Cavalla, and in Drama and Serres the situation is the same. The condition of the population is literally lamentable. In addition to the deaths by the thousands from starvation, the economic situation of the inhabitants has become desperate on account of the exorbitant rise of the prices of the things of prime necessity. The mayor of Cavalla, in order to save the population, begs the Royal Government to send him an aid of money as a loan to the city, on the understanding that it will be returned on the reestablishment of the former situation.

I am proceeding to make the proper representations concerning the transportation of the population to the interior of Bulgaria, and am asking for explanations and protection by the local authorities to the families which are transported.

NAOUM.



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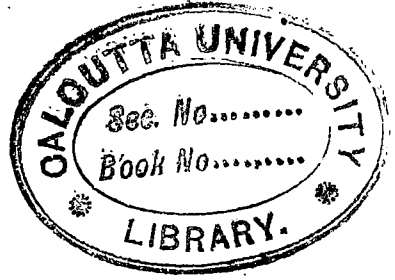
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OFFICIAL DOCUMENTS

CORRESPONDENCE RESPECTING THE TRANSIT TRAFFIC ACROSS HOLLAND OF MATERIALS SUSCEPTIBLE OF EMPLOYMENT AS MILITARY SUPPLIES¹

No. 1

*Memorandum communicated by Netherlands Minister,
October 9, 1917*

- (a) *Transit of metals from Belgium to Germany through the Netherlands.*
- (b) *Transit of gravel, etc., from Germany to Belgium through the Netherlands.*

The Netherlands Government are bound from one side by the Rhine Convention, which guarantees a free passage for all merchandise up and down the Rhine, and from the other side by the Fifth Hague Convention, which does not allow the transit of convoys either of munitions or provisions over their territory.

The Netherlands Government had to reconcile these two in some respect conflicting obligations.

Ad (a) In view of the above-mentioned difficulty they limited the obligatory free passage from Belgium through [*sic*] Germany to goods which had no connection with the military operations in Belgium. No requisitioned metals were, for that reason, allowed to pass through Netherlands territory. The metal, however, which is obtained in Belgium by melting ore imported for that purpose from Germany, could evidently not be considered as requisitioned metal, and the Netherlands Government deem themselves therefore bound to allow its transit. When the Netherlands Minister of Foreign Affairs wrote on the 10th June to Sir Walter Townley that the transit of all metals would in future be forbidden on account of the great difficulty to decide whether any metal was requisitioned or not, it did not occur to him

¹ British Parliamentary Paper, Miscellaneous No. 17 (1917). [Cd. 8693.]

that there might in fact exist any kind of metal of which the non-requisitioning would be so evident as in the case of the above-mentioned melted copper; as soon as this eventually came to his knowledge, however, he immediately informed the British Legation that this copper of course could not be prevented from passing through to Germany.

The Minister of Foreign Affairs begs to express his sincere hope that what in fact was nothing but a comprehensible omission on his part will not be considered by the British Government as pointing to a tendency not to observe given assurances.

Two cargoes of this copper metal have passed the Netherlands already, but it is to be expected that others may follow. The Netherlands Government feel confident that the British Government will admit the impossibility in which the Netherlands Government is placed by the Rhine Convention to forbid the free transit of these goods.

Ad (b) The Netherlands Government have given themselves all possible trouble to inform themselves as fully and accurately as possible as to the destination of the sand and gravel which is sent from Germany to Belgium, in order to be able to strictly limit these consignments to nonmilitary purposes. Two Netherlands officers of the Royal Military Engineer Corps were sent to Belgium to investigate the matter on the spot, and their report was communicated to the British Legation on the 23d October, 1916. The report was, in the eyes of the Netherlands Government, conclusive as to the fact that the quantity of gravel, etc., which had passed through the Netherlands from Germany to Belgium had in fact been used entirely for the construction of nonmilitary works, such as Article 43 of the Fourth Hague Convention obliges the belligerent to execute in an occupied territory. In order, however, to make themselves still more sure in this respect, the same two Netherlands officers were sent again to Belgium in the course of last summer. From their investigations on the spot the Netherlands Government drew the conclusion that, the roads being now all repaired, a further amelioration of them could serve military purposes only, and they therefore decided to allow the further transport through the Netherlands no farther than on a very restricted scale, limiting it to the quantity apparently necessary for the ordinary keeping up of the roads in the beginning of 1918. As these cargoes had to arrive on the place of their destination before the waters may be frozen, it was decided that a quantity of 370,000 tons would be allowed to pass through, in two equal portions, between the 15th September and the 15th November.

The Netherlands Government have the intimate conviction that by allowing the above transports within the limits indicated, they have acted in the fullest conformity with their duties as a neutral and their conventional obligations. They have, therefore, been most painfully surprised that in answer to their note of the 14th September, in which they explained to the British Minister at The Hague the justification of their attitude, Sir Walter Townley informed the Minister of Foreign Affairs on the 20th September that, unless an assurance would be given that the transit of gravel, etc., as well as of metals would cease, the British Government intended to discontinue any facilities for the transmission of Dutch cable messages. In government circles this menace has not failed to make a most painful impression. The Netherlands Government are convinced that in view of the Rhine Act they can not take a line of action different from the one pursued by them now. The terms of that convention oblige them to allow the transit of all merchandise of which they can not state with certitude that they are included in Article 2 of the Fifth Hague Convention. They, therefore, have great difficulty to believe that, for the sole reason that the attitude of the Netherlands Government — though in itself fully correct — is contrary to the interests of the British nation, the British Government would have recourse to a measure which not only lacks all connection with the transit of metals or gravel but which would assume the character of reprisals and against which the Netherlands are powerless. Such a measure could hardly be considered otherwise than as an abuse of power of a belligerent nation towards a neutral country which continually observes in the most scrupulous way its duty of neutrality towards all belligerents, without regard to the difficulties which it thereby creates for itself. The Netherlands Government have never hesitated to render with impartiality to all belligerents any service congruent with their neutrality, of which their offer to the British and German Governments to give hospitality to several thousands of their prisoners of war is the most recent example.

London, *October 9, 1917.*

No. 2

Mr. Balfour to M. van Swinderen

Foreign Office, October 23, 1917.

SIR: With reference to the difference which has arisen between our two governments relative to the passage into Belgium through Holland of materials susceptible of use for the construction of concrete defenses on the German front in Flanders and for other warlike purposes, and to the passage across Holland in transit from Belgium to Germany of metals and other materials intended for employment in the German munition factories, I have the honor to send you herewith a memorandum in reply to the legal arguments contained in your communication to this Department of the 9th instant.

I have etc.

A. J. BALFOUR.

Inclosure in No. 2

*Memorandum containing the Reply of His Majesty's Government to
Memorandum of the Netherlands Minister of October 9, 1917.*

In a memorandum¹ dated 9th October, the Netherlands Minister was good enough to formulate the arguments which he had used on behalf of his government to justify the transit across Netherlands territory of metals from Belgium to Germany, and of sand and gravel from Germany to Belgium.

2. The memorandum separates the transit of metals from the transit of the sand and gravel, and advances different contentions with regard to each. In the opinion of His Majesty's Government, there is no fundamental distinction between the two, and to attempt to differentiate between them merely confuses the issue by the introduction of minor and irrelevant considerations. In each case His Majesty's Government contend that the Netherlands Government are allowing the German Government to make use for military purposes of Dutch territory in a way contrary to the established principles of international law and of public right. The German Government have been and are being allowed to transport supplies required in connection with their military operations from their own territory to territory in German

¹ See No. 1.

occupation, and *vice versa*, across the territory of a state taking no part in the war. The intention and the result is materially to relieve the strain upon the railways and waterways of the belligerent country essential to its military operations. That is the broad proposition for which His Majesty's Government contend, and they are unable to find in the arguments contained in M. van Swinderen's memorandum any justification for the direct assistance to their enemies which is in this way being rendered by the Netherlands Government.

3. In respect of the transit of metals from Belgium to Germany, the memorandum maintains that when the Netherlands Minister for Foreign Affairs wrote to Sir W. Townley on the 10th June that the transit of all metals would in future be stopped, he forgot that there might be some metals which it was obvious had not been requisitioned and as to which there was consequently no reason for prohibiting the traffic. The memorandum states that the Netherlands Government, being bound on one side by the Rhine Convention and on the other by the Land War Neutrality Convention, were obliged to reconcile these two conflicting obligations, and had done so by prohibiting the transit of requisitioned goods.

4. His Majesty's Government regard this reasoning as unsound. The obligation incumbent upon a neutral state is not merely to prohibit the passage of requisitioned goods: it is founded upon the general principle that a neutral state must not allow any use of its territory to be made by a belligerent for military operations—the transit of belligerent convoys of munitions or provisions would be such a use, and therefore their transit is prohibited by the convention mentioned above. What is taking place in this case, even upon the facts as stated in the memorandum, amounts to a use of neutral territory for such transit purposes, and thereby constitutes a breach of the obligation incumbent upon a neutral state. If Germany finds it necessary, for her own purposes, to send commodities containing copper to Belgium to be smelted in order to extract the metal, and then to return the metal from Belgium to her own territory for use in her munition factories, the carriage of these supplies backwards and forwards, if permitted via neutral territory, affords relief to the direct military transport system between Belgium and Germany and constitutes the use by Germany of Netherlands territory for military purposes. For the Netherlands Government to permit this, is to fail in the observance of their duties as a neutral.

5. The distinction between Article 2 and Article 7 of the Land War Neutrality Convention is quite simple. The former article is aimed at the use of neutral territory by a belligerent government and comes into play whenever the belligerent state is itself concerned with both the dispatch and the receipt of the troops, stores, or supplies forwarded. Article 7 deals with the transport of goods which have been acquired by a belligerent state as the result of commercial transactions with private persons in foreign countries. Such transactions primarily do not concern the neutral government. Measures which it thinks it desirable to impose for the purpose of preventing such dealings by its nationals, or of preventing the export of such commodities from its territory, or their passage across it, are taken not in order to carry out the obligations of neutrality, but in the interest of the neutral nation itself.

6. The memorandum states that the transit of the metals is guaranteed by the Rhine Conventions. A search of the provisions of the treaties as to the Rhine navigation has been made by the appropriate department of His Majesty's Government, but no stipulation has been found which has any bearing on the question. These treaties deal with the right of passage for goods up and down the Rhine between the riverain states and the sea. No stipulation has been found which obliges the Netherlands Government to permit the passage of goods over the Dutch waterways which were not on their way to or from the sea. His Majesty's Government would therefore be grateful if the Netherlands Minister would indicate with greater precision to what provision in these treaties he refers. In any case, His Majesty's Government would not be prepared to admit that the detailed arrangements which have been entered into in order to carry out the principles as to freedom of commerce on rivers, laid down by the Congress of Vienna, could be interpreted to justify, still less to compel, violations of the obligations of neutrality.

7. With regard to the sand and gravel, M. van Swinderen's memorandum argues that the Netherlands Government are bound under the Rhine Conventions to permit the passage of all merchandise which can not be stated with certainty to fall within Article 2 of the Land War Neutrality Convention, and that they have done their best to limit the consignments which have been allowed to pass to those destined for nonmilitary purposes. From what has been stated above the Netherlands Government will realize that the view held by His

Majesty's Government is that no sand and gravel should be allowed to pass — not merely that the quantity should be limited to a certain amount. This sand and gravel is sent from Germany to Belgium by the German Government for its own purposes. It is immaterial whether those purposes are alleged to be civil or alleged to be military. Germany is in occupation of Belgium merely in pursuit of military objects, and there can be no purpose to which the sand and gravel so dispatched via the Dutch waterways can be put which does not constitute a use of those waterways for the forwarding by the enemy of supplies which are required in connection with the war. The suggestion that the sand, etc., is used for purposes within the purview of Article 43 of the Land War Regulations is beside the point. Those regulations apply only to a power in *military* occupation of territory, and supplies required in order to carry out the obligations of a military occupant are supplies required for military purposes. Even if these supplies, therefore, were sent to Belgium via Holland solely for the purpose of carrying out the obligation incumbent upon the occupant of Belgium under Article 43 of the Land War Regulations, and were limited in quantity to the amount required for that purpose, the fact would afford no answer in law to the Netherlands Government.

8. The theory that the transit of these goods through Holland is justified on the above grounds can not indeed be maintained even upon the facts alleged by the Netherlands Government. The sand and gravel which has been allowed to pass is far in excess of anything which is required for civilian purposes in Belgium. There is also the local output to be taken into account. Belgian quarries can themselves easily produce all that is required for nonmilitary purposes in the country; there can, therefore, be no need to supplement those supplies by importations from Germany. In this connection it may be observed that, since it is understood that the Belgian quarries are being worked by prisoners of war, the output is doubtless being used for civilian purposes. Were it not so, there would be a breach of Article 6 of the Land War Regulations, since it would be a case of employing the labor of prisoners of war on work connected with military operations. Ample supplies of sand and gravel for the civilian purposes of Belgium are secured from her own resources, and it follows that any more sent in from outside must be employed for military works. His Majesty's Government feel no doubt but that the Netherlands Government are allowing use to be made of Dutch territory by the Germans for the

purpose of forwarding to Belgium in enormous quantities supplies which have an intimate connection with the military defenses of the German forces on the Western front; and they certainly are not disposed to acquiesce in any arguments to the effect that the Netherlands Government are bound to allow this traffic either under the Rhine Conventions or under any principle of international law or public right. On the contrary, they maintain that the Netherlands Government are bound to put an end forthwith to this transit traffic of the sand and gravel equally with that of the metals.

Foreign Office, October 23, 1917.

No. 3

Sir W. Townley to Mr. Balfour. — (Received October 26)

(Telegraphic)

The Hague, October 25, 1917.

In a written communication the Netherlands Minister for Foreign Affairs informs me that no copper of any kind has passed through Holland from Belgium to Germany since his note of the 10th June, and that M. van Swinderen acted under a misapprehension in stating the contrary in the communication which he made to His Majesty's Government on the 9th October.¹ Yesterday, in the course of conversation, his Excellency said that the Netherlands Minister must have confused copper with the lead on the "Ristelhuebers" which has formed the subject of correspondence in the past.

No. 4

M. van Swinderen to Mr. Balfour

(Translation)

Netherlands Legation, London,

October 26, 1917.

SIR: In paragraph 6 of the memorandum which your Excellency was good enough to send me in your note of the 23d instant² you request me to give you more precise information concerning the stipulations of the Rhine Convention which impose on the Netherlands Government the obligation to guarantee the free navigation of rivers and canals other than the Rhine itself.

¹ See No. 1.

² See No. 2.

To satisfy this request, I venture to draw your attention to Article 2 of the Rhine Convention (of the 17th October, 1868), which guarantees free navigation on the waters lying between the Rhine and Belgium. In addition, I have the honor to refer to paragraphs 1 and 5 of Article 9 of the Treaty of London of the 19th April, 1839, between Belgium and the Netherlands, and also to Article 7 of the special regulations respecting the navigation of the Scheldt contained in Annex 16 to the Act of the Congress of Vienna.

Please accept, etc.

R. DE MAREES VAN SWINDEREN.

No. 5

Mr. Balfour to M. van Swinderen

Foreign Office, October 30, 1917.

SIR: In continuation of the memorandum respecting the transit traffic across Holland inclosed in my note of the 23d instant,¹ I have the honor to send you herewith, for communication to your government, a further memorandum on the subject, the purpose of which, as you will observe, is to meet the request of the Netherlands Government for evidence that sand and gravel transited across Holland has, in fact, been used for warlike purposes on arrival in Belgium.

2. His Majesty's Government learn from His Majesty's Minister at The Hague that the Netherlands Government are anxious to publish at an early date the correspondence between our two governments respecting this question. His Majesty's Government welcome such intention, and trust that the papers to be published by the Netherlands Government will cover, without omission of any material document, the whole period of the controversy, dating back to November, 1915.

3. His Majesty's Government intend on their part to lay the complete correspondence before Parliament as soon as the necessary arrangements can be made. But as these arrangements will entail a certain delay, they propose, as a preliminary step, immediately to publish the more recent correspondence, including your memorandum of the 9th instant, and the further exchange of communications between us which has since taken place.

I have, etc.

A. J. BALFOUR.

¹ See No. 2.

Inclosure 1 in No. 5

Memorandum

1. The memorandum inclosed in Mr. Balfour's note of the 23d instant¹ dealt with the legal contentions put forward by the Netherlands Government in connection with the controversy about the transit of sand and gravel through Holland. It did not, however, deal at any length with the contention advanced by the Netherlands Government in M. van Swinderen's memorandum of the 9th October,² to the effect the Netherlands Government did not deny that if the sand and gravel was intended to be used by the Germans for military purposes its transit should not be allowed, but that the Netherlands Government were not aware of any proof of such intended use, and asked to be furnished with it.

2. His Majesty's Government, as already explained, can not admit that the actual method of using the sand and gravel is under the circumstances decisive as to the legitimacy of permitting its transit; they, nevertheless, think it right to explain to the Netherlands Government the reasons which have induced them to come to the conclusion that beyond all reasonable doubt the sand and gravel transited across Holland is, in fact, used by the Germans for direct military objects, such as the construction of concrete defenses in their entrenched lines.

3. In support of this view they desire in the first place to call attention to the actual quantities transited, in relation to the estimated needs of Belgium for civilian purposes. The Netherlands Government are aware that this matter has been under discussion between the two governments for a considerable period. As early as November, 1915, His Majesty's Government addressed to the Netherlands Government remonstrances on the subject, and in consequence of these remonstrances on the 11th July, 1916, the Netherlands Minister for Foreign Affairs informed the British representative at The Hague that the Netherlands Government had provisionally decided to restrict the transit of gravel to the amount of 75,000 tons per month or 900,000 tons a year, on the ground, presumably, that that was all that could be required for Belgian pacific purposes. Shortly afterwards, however, in consequence of representations by a German expert, the Netherlands Government altered their decision, and agreed to permit a transit

¹ See No. 2.² See No. 1.

of no less than 420,000 tons a month in the two months of August and September, 1916, being at the rate of 5,000,000 tons in the year, or six times what the Netherlands Government had themselves thought necessary. His Majesty's Government were seriously dissatisfied with this decision, and in consequence of further remonstrances on their part two Dutch officers were directed to proceed to Belgium to inquire what, in their opinion, was reasonably necessary for Belgian civilian needs. His Majesty's Government do not attach great importance to the report of these officers. It appears that they were not allowed to visit the so-called "Etappen-Gebiet," or military zone, so that they could form no opinion, and, as is understood, did not attempt to form any opinion whether sand and gravel transited across Dutch waterways was in fact used for works of fortification.

4. It appears from their report that large quantities of sand and gravel were required for the remaking and maintenance of roadways, the double-ballasting and maintenance in repair of railways, and the strengthening and upkeep of river and canal embankments and maritime and riverside quays. But all these works serve the communications of an army. Is it reasonable then to suppose that they are reconstructed and kept in repair by the Germans, not because of the military purposes which they serve, but because the Belgian population, following their normal peace-time occupations, require to make use of them? Is there the slightest evidence that the Germans have ever considered the interests of the Belgian civilian population? Is it not notorious that deliberately and as part of their settled policy they have destroyed the industrial and economic resources of Belgium because the Belgians would not consent to use those resources for German benefit? Is it not then clear that if road surfaces in Belgium have been transformed from one type to another, and important railway embankments strengthened doubly beyond what was found necessary in peace time, all this has been done in order to improve the lines of communication of the German army and that roads, railways, etc., in Belgium are kept in repair simply in order that they may carry the military traffic which requires to pass over them.

5. The Netherlands Government state that they sent their officers a second time to Belgium this summer, and from their investigation arrived at the conclusion that all roads had been repaired, and they have informed the British Government that a quantity of 1,650,000 tons annually was all that should be transited to satisfy the civilian needs

of Belgium. A French expert, M. Tur, making calculations on the basis of the civilian works existing in Belgium before the war, and assuming a peace-time rate of wear and tear, estimated that 1,345,000 tons represented the nonmilitary requirements of Belgium. It is right to observe that these estimates are in all probability greatly excessive for the actual civilian use of roads and other nonmilitary works, which might reasonably be supposed to require sand and gravel for their upkeep, since civilian life in Belgium is practically at a standstill, and there is, in consequence, no civilian use of the roads or anything else. Nevertheless, for the purpose of the contention now being put forward, His Majesty's Government are content to assume, contrary to their own opinion, that the figures adopted by the Netherlands Government, namely 1,650,000 tons, are correct. It is admitted that far more than that, namely some 2,300,000 tons of sand and gravel have already been transited across Holland during this year, and it seems, therefore, abundantly clear that a considerable proportion of the sand and gravel so transited — amounting to some 600,000 or 700,000 tons — has been used for noncivilian purposes.

6. Nor does the case stop there. There are quarries in Belgium which in peace time produce upwards of 5,000,000 tons of these materials. It is understood that these quarries are now being worked for the Germans by Russian prisoners of war. Possibly their output is considerably less than it would be in peace time, though according to the information in the possession of His Majesty's Government they are being vigorously and efficiently worked. Even allowing for a very largely diminished output it is perfectly plain that sand and gravel more than sufficient to cover the assumed civilian needs of Belgium can be and, in all human probability, is being obtained from these quarries. It is suggested that the output of these quarries is being used for military purposes, but His Majesty's Government are surprised at such a suggestion, and can not accept it. The quarries are being worked by prisoners of war, and by Article 6 of the Hague Land War Regulations it is illegal to use prisoners of war for military work. His Majesty's Government can not believe that the Netherlands Government would contend without proof that the output of the quarries was in fact being used for military purposes, or that they would suggest that if it was being so used they were justified in supplying sand and gravel for the civilian purposes of Belgium, so as to enable the Germans to commit this breach of international law. Moreover,

the British Government have caused an analysis to be made of concrete actually used in German military works on the Flanders front recently captured by the British, and they find that it is composed of material which comes unquestionably from German quarries and not from Belgium. This strongly supports the presumption that the output of the Belgian quarries is being used for what are called Belgian civilian purposes, and that, since that output is more than sufficient for the purposes in question, any sand and gravel transited across Holland from Germany into Belgium must be used for other than civilian, that is for military, purposes.

7. In support of this view the Netherlands Government are reminded that it is clear from the history of the controversy that they themselves have felt great doubts as to the use of the sand and gravel transited across Holland. When the matter was first raised in 1915-16 they thought it right to ask the German Government to be furnished with certificates as to the employment of the sand and gravel, and the German Government readily furnished them with "scraps of paper" certifying that the sand and gravel was required for civilian purposes only. The Netherlands Government came to realize that it would not be right to attach very great importance to these certificates, and it was in spite of them that they decided in the summer of 1916 to restrict the transit of sand and gravel to 75,000 tons a month, as already mentioned. It is true that the Netherlands Government subsequently altered their minds on the point, and after much hesitation and obvious misgivings decided to continue to accept these certificates. Even so they were not satisfied, because early in July of the present year they announced to the German Government that they had arrived at the conclusion that sufficient sand and gravel had been transited for the whole of Belgian pacific needs, and that they were resolved no more should go after the 15th August. This decision was communicated to the British Government in July, and it was therefore with no little amazement they heard a little later that the Netherlands Government had decided to allow transit of an additional 300,000 or 400,000 tons of sand and gravel up to the 15th November, upon the ground that some such quantity would be legitimately sent in the early months of next year, and that at that time there might be a frost which would prevent the use of Dutch waterways. It seems only necessary to point out that if there was a frost in the early months of next year, it would be clearly impossible to utilize the sand and gravel for concrete or road

work, or indeed for any other purposes, and that, even if by some accident of the weather such use became possible, there could be no real objection to deferring for a month or two the works which would otherwise have been done in those months.

8. His Majesty's Government can not resist the conclusion that the reason the German Government demanded the transit of the 300,000 or 400,000 tons before November was because they wanted it for immediate use for military purposes, and much to their regret they find it difficult to believe that the Dutch Government was not perfectly well aware that such was the purpose of the German Government.

9. Finally, the attention of the Netherlands Government is called to the annexed copy ¹ of a sworn affidavit from a Belgian who recently escaped, which states in precise and definite terms that some, at any rate, of the sand and gravel transited across Holland is taken up across the Belgian waterways to convenient places, from which it is used for the construction of military fortifications by the Germans.

10. His Majesty's Government have no wish to embitter the controversy which has arisen between them and the Netherlands Government on this subject. On the contrary, they are exceedingly anxious, as they always have been, to live on the most friendly terms with their Dutch neighbors, and to return as soon as possible to normal relations with them in all respects. They venture therefore very earnestly to press upon the Netherlands Government that the proofs which they have hereinbefore enumerated of the military use of the sand and gravel transited across Holland are in the aggregate overwhelming. It is perfectly true that the sand and gravel was not openly consigned to the military zone in Belgium, or declared to be intended to be used for military purposes by the Germans. It is true that it can not be shown what was done with any particular barge-load of sand or gravel, nor can the actual military work constructed with it be pointed out — that is obviously impossible. But, short of that, the proof required by the Netherlands Government could scarcely be clearer or more cogent.

11. In the first place, there is the fact that since the German occupation there has been little or no pacific use of Belgian roads, railways, and quays. Then there are the quantities of sand and gravel transited into Belgium, vastly in excess of any possible civilian requirements. Then there is the proof that such civilian requirements, if they exist, could be and almost certainly have been supplied from sources in

¹ See Inclosure 2 in No. 5.

Belgium itself. Next there is the certain knowledge that the German demands for these supplies for direct military objects, such as fortifications, is enormous, and there is the evidence that the concrete used for such fortifications is derived from material which comes from Germany — comes, that is, from the source from which the transited gravel comes, and not from the Belgian quarries. And, finally, there is the direct sworn evidence that certain loads of sand and gravel which had been transited were in fact used for military objects.

12. It is difficult to imagine what more any inquirer, really anxious to get at the truth, could ask to be convinced that the sand and gravel transited through Holland is being used for the purpose of directly assisting the military operations of one of the belligerents.

Foreign Office, October 30, 1917.

Inclosure 2 in No. 5

In the Matter of "The Statutory Declarations Act, 1835," and in the Matter of the Transit of Sand and Gravel across Holland

I, of
....., do hereby solemnly and sincerely
declare as follows:—

1. I am a Belgian subject, and escaped from
on the 1917.

I am well acquainted with the conditions prevailing in Belgium, and especially Antwerp, up to the time of my departure. Being out of employment, I had exceptionally good opportunities of seeing what was taking place in connection with the traffic of gravel and sand, and I am able, therefore, to state the facts which I mention as the result of my own observation and knowledge.

2. No sand or gravel is obtainable in Belgium which is suitable for making concrete.

3. In sheds Nos. 2, 3, 4, and 5 at South Antwerp the Germans are working night and day making concrete blocks about 1 meter long and 60 centim. high and broad, having slots and protuberances that fit one into the other. Similar work is being carried out at Bûrecht and at one of the Hoboken factories.

4. There were at the time of my departure from Antwerp about 3,000,000 tons of gravel and sand stacked at Antwerp at the Kattendijk and New Docks.

5. Lighters of about 1,200 tons are constantly employed in bringing sand, gravel, stone, timber, and cement from Germany through Holland to Antwerp and Ghent. These cargoes are discharged on to the quays and then reloaded into small lighters, the crews of which are Belgian and French, and they and the owners of the vessels are forced to work by the Germans under pain of punishment. When these lighters arrive in the military zone the crews are put ashore and housed in armed cement dugouts. These lighters are of about 250-270 tons burden, and about 1,500 are in constant use. In addition to the lighters, 280 tugs of about 25 tons each are constantly engaged in the traffic.

6. Large amounts of dressed timber cut into measured lengths go through in lighters, which are loaded also with sand and pontoons.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of "The Statutory Declarations Act, 1835."

(Signed)

Declared at the Admiralty, in the County of London, this 30th day of October, 1917, before me:

ARTHUR F. B. WELCH,
Commissioner for Oaths.

No. 6

Mr. Balfour to M. van Swinderen

Foreign Office, November 6, 1917.

SIR: Your note of the 26th October¹ referred me to the particular provisions in the Rhine Conventions which, in the opinion of the Netherlands Government, oblige them to permit the passage through the Dutch waterways of the sand and gravel which is forwarded by the German authorities to Belgium. These provisions are Article 2 of the Rhine Convention of the 17th October, 1868; paragraphs 1 and 5 of Article 9 of the Treaty of London of the 19th April, 1839, between Belgium and the Netherlands; and Article 7 of the Regulations relating to the Navigation of the Scheldt annexed to the Proceedings of the Congress of Vienna.

2. Since the receipt of your note the stipulations in question have been subjected to careful examination in this department, but the

¹ See No. 4.

result has not been in any way to modify the views expressed in my memorandum of the 23d October.¹

3. The Rhine Convention of the 7th October, 1868, was a treaty between France, Baden, Bavaria, Hesse, the Netherlands, and Prussia, entered into for the purpose of revising the earlier treaty of the 31st March, 1831, between the same parties (including Nassau). Such revision was necessary because the earlier treaty had undergone numerous modifications, and had ceased in part to harmonize with the existing conditions of the Rhine navigation. Both the treaties were intended to assure to the riverain states of the Rhine that freedom of navigation of rivers passing through several states on which the Congress of Vienna had determined, and to protect them against the levying of taxation or the imposition of restrictions by particular states through whose territory the commerce of the others must pass. The more immediate objects which each treaty was destined to achieve are indicated by their preambles and by the general nature of their contents.

4. Article 2 of the Convention of 1868 does, it is true, make mention of boats and rafts passing from the Rhine to Belgium, but if the article is read as a whole its purpose is clear. There were various channels which might be used for the purpose of passing from the Rhine to Belgium, and these channels were in Holland; boats of other riverain states coming from the Rhine were to be allowed to choose whichever they pleased, so that if one channel should become impracticable for navigation, any other channel which was open to Dutch boats should also be open to them; in short, the purpose of the article was to prevent the Netherlands Government discriminating in favor of Dutch boats. The provision does not extend the general scope of this convention or carry it beyond the general object of the decisions come to at the Congress of Vienna. The stipulation relates only to commerce in its ordinary sense — the passage of goods which are the subject of mercantile transactions. It can have no bearing on the measures which a state may be bound to take, or may be justified in taking, in defense of its neutrality.

5. Paragraphs 1 and 5 of Article 9 of the Treaty of London of 1839 are the next provisions to which you refer. It is not usual to regard the treaty of the 19th April, 1839, between Holland and Belgium as included among the Rhine Conventions. The object of the treaty was to secure the recognition by Holland of the independence and per-

¹ See Inclosure in No. 2.

manent neutrality of Belgium: as part of the arrangement, the freedom of navigation stipulated for by the Congress of Vienna was to apply to the waterways separating the two countries or traversing them both (section 1), and the *commerce* of the two countries was to benefit by the channels between the Scheldt and the Rhine being free and subject only to moderate tolls (section 5).

6. Article 7 of the Regulations of 1815 relating to the navigation of the Scheldt does not appear to affect the question. It merely stipulates that any further arrangements which it may be necessary to make as to the navigation of the Scheldt shall be as favorable as possible to commerce and navigation, and shall be analogous to the regulations established on the Rhine. If the treaty provisions which are at present in force relating to the freedom of the navigation of the Scheldt are regarded by the Netherlands Government as preventing in any way the enforcement of their obligations as a neutral state, His Majesty's Government do not understand on what ground the Netherlands Government claimed to prevent the departure from Antwerp of the German ships which had been captured at that place by the Belgian forces.

7. The detailed examination which I have made above will suffice to demonstrate that His Majesty's Government can not admit that the provisions of the Rhine Convention of 1868, or that the other treaty stipulations to which reference has been made, can afford any justification to the Netherlands Government for failing to enforce their obligations as a neutral state and to put a stop to the use of the Dutch waterways by the German Government for forwarding their supplies of commodities such as sand and gravel for Belgium.

I have, etc.

A. J. BALFOUR.

ANNEXES

No. 1

VIENNA CONGRESS TREATY, MARCH, 1815

Annex XVI

Regulations for the Free Navigation of Rivers
Articles concerning the Navigation of the Necker, the Mayne, the
Moselle, the Meuse, and the Scheldt

ARTICLE VII

Future Regulation of the Navigation of the Scheldt

Everything relating to the navigation of the Scheldt, which may need ulterior arrangement, besides the freedom of navigation on this river, specified in Article I, shall be definitely regulated in a manner the most favorable to commerce and navigation, and the most analogous to the regulations established on the Rhine.

No. 2

CONVENTION BETWEEN THE RIVERAIN STATES OF THE RHINE;
AND REGULATIONS FOR THE NAVIGATION OF THAT RIVER.
SIGNED AT MAYENCE, MARCH 31, 1831

Preamble

The completion of the definitive regulation for the navigation of the Rhine, in accordance with the stipulations of the Act of the Congress of Vienna, having experienced difficulties arising out of the manner in which the riverain governments interpreted the general principles of that Act to the vessels coming from Germany and crossing the Netherlands in a direct line to the open sea and *vice versa*; considering that His Majesty the King of the Netherlands has maintained that his rights of sovereignty extended without any restriction whatever over the sea bathing his states, even where it mixes with the waters of the Rhine, and that, in accordance with the conferences previous to the

Act of the Congress of Vienna, the Leck only was to be considered as the continuation of that river in the Netherlands; whilst His Majesty the King of Prussia, His Majesty the King of Bavaria, and His Royal Highness the Grand Duke of Hesse have maintained that the Act of the Congress of Vienna had placed certain restrictions on the exercise of those rights in so far as they might apply to vessels passing from the Rhine into the sea, and *vice versa*; and that under the denomination of the Rhine the said Act included the whole course, also the branches, and all the mouths of that river in the Netherlands, without any distinction — views in which His Majesty the King of the French and His Royal Highness the Grand Duke of Baden now equally concur; the riverain states have thought proper to leave intact all questions mooted on the general principles of the Act of the Congress of Vienna bearing upon the navigation of the Rhine, as well as the inferences which might be drawn therefrom, and to concert measures and regulations which the navigation of the Rhine can no longer dispense with, on the basis of joint proposals reciprocally made and accepted, under the express reservation, nevertheless, that such understanding shall in no wise be prejudicial to the rights and principles maintained on either side.

No. 3

ACT OF ACCESSION ON THE PART OF THE GERMANIC CONFEDERATION
TO THE TERRITORIAL ARRANGEMENTS CONCERNING THE GRAND
DUCHY OF LUXEMBURG, LAID DOWN IN THE TREATY OF APRIL
19, 1839. LONDON, APRIL 19, 1839.

ARTICLE IX

§ 1. The provisions of Articles CVIII to CXVII, inclusive, of the General Act of the Congress of Vienna, relative to the free navigation of navigable rivers, shall be applied to those navigable rivers which separate the Belgian and the Dutch territories, or which traverse them both.

§ 5. It is also agreed that the navigation of the intermediate channels between the Scheldt and the Rhine, in order to proceed from Antwerp to the Rhine, and *vice versa*, shall continue reciprocally free, and that it shall be subject only to moderate tolls, which shall be the same for the commerce of the two countries.

No. 4

CONVENTION BETWEEN FRANCE, GRAND DUCHY OF BADEN, BAVARIA, GRAND DUCHY OF HESSE, NETHERLANDS, AND PRUSSIA, RELATIVE TO THE NAVIGATION OF THE RHINE. SIGNED AT MANNHEIM, OCTOBER 17, 1868.

Preamble

The convention relative to the navigation of the Rhine concluded on the 31st March, 1831, between the riverain governments, having since then undergone numerous modifications, and a part of the stipulations contained therein being no longer in harmony with the actual conditions of the navigation, His Majesty the Emperor of the French, His Royal Highness the Grand Duke of Baden, His Majesty the King of Bavaria, His Royal Highness the Grand Duke of Hesse, His Majesty the King of the Netherlands, and His Majesty the King of Prussia have resolved, by common consent, to revise that convention, maintaining, nevertheless, the principle of the free navigation of the Rhine in matters of commerce, and have, to that effect, appointed commissioners plenipotentiary, namely:—

ARTICLE II

Vessels affected to the navigation of the Rhine, and rafts or floats of timber coming from the Rhine, shall have the right to choose whichever route they wish in traversing the Netherlands on their way from the Rhine to the open sea or to Belgium, and *vice versa*. If one of the navigable channels connecting the open sea and the Rhine via Dordrecht, Rotterdam, Hellevoetsluis, and Brielle becomes impracticable for navigation from natural causes or by reason of mechanical works, the navigable channel which is appointed for the use of Netherlands vessels in place of the obstructed channel shall be equally open for navigation by the other riverain states. Any vessel having the right to carry the flag of one of the riverain states and able to prove that right by a document issued by the competent authority shall be considered as affected to the navigation of the Rhine.

CORRESPONDENCE WITH THE NETHERLANDS GOVERNMENT RESPECTING DEFENSIVELY ARMED BRITISH MERCHANT VESSELS¹

No. 1

Sir Edward Grey to Mr. Chilton

(Telegraphic.)

Foreign Office, August 8, 1914.

You should lose no time in explaining to Netherlands Government that British armed merchant vessels are armed solely for purposes of defense, in case they raise any question as to their position. Existing rules of international law grant the right of defense to all merchant vessels when attacked. There can be no right on the part of a neutral government to order the internment of British-owned merchant vessels, nor to require them before putting to sea to land their guns, because the duty of such neutral government to order the immediate departure or internment of belligerent vessels is limited to actual and potential warships, and as Great Britain does not admit that any Power has the right to convert merchant vessels into warships on the high seas, British merchant vessels that are in foreign ports can not be so converted.

As German rules permit German merchant vessels to be converted on the high seas, we maintain our claim to have them interned unless the neutral government are prepared to assume responsibility for a binding assurance that no such conversion shall take place.

No. 2

Mr. Chilton to Sir Edward Grey. — (Received August 10)

(Telegraphic.)

The Hague, August 9, 1914.

I communicated contents of your telegram of 8th August to Minister for Foreign Affairs this morning. His Excellency tells me, after consultation with Minister of Marine, that Netherlands Government agree to your demand as to treatment of British and German merchant

¹ British Parliamentary Paper, Miscellaneous No. 14 (1917). [Cd. 8690.]

vessels, but adds that Netherlands officials must examine British vessels for form's sake.

His Excellency is sending me written statement¹ tomorrow, which I will telegraph if necessary; if not, will forward tomorrow night by post.

No. 3

Mr. Chilton to Sir Edward Grey

(Telegraphic. Extract.)

The Hague, August 10, 1914.

Naval attaché had a conversation today with Dutch Minister of Marine on the subject of armed merchantmen.

Latter said that Netherlands Government had already issued precise instructions not to admit to Dutch territorial waters any merchantmen that were capable of performing any warlike act, and that they were therefore placed in a very difficult position by the request of the British Government asking neutrals to differentiate between auxiliary cruisers and merchant vessels defensively armed. He himself fully realized the difference, but feared the people might not, and that if any modification was now made in these instructions the government might be accused by the Dutch navy and therefore by the nation, which up to now had been somewhat afraid of a violation of their territory by England, of departing from its attitude of strict neutrality. This would have the effect of throwing Dutch nation into arms of Germany.

No. 4

Sir Edward Grey to Sir A. Johnstone

Foreign Office, March 7, 1915.

SIR: In view of the menace from German submarines, it is possible that an increase may take place in the number of defensively armed British merchant ships, and that among them may be some which normally trade with Netherlands ports.

I should be glad to learn as soon as possible whether the Netherlands Government still hold the strong objections to the entry of such vessels into their ports which they held at the beginning of the war.

I am, etc.

E. GREY.

¹ This statement was never received.

No. 5

Sir A. Johnstone to Sir Edward Grey. — (Received April 12)

The Hague, April 8, 1915.

SIR: On receipt of your dispatch of the 7th ultimo respecting the possible increase of defensively armed British merchant vessels, some of which normally trade with the Netherlands, I addressed a note to M. Loudon expressing the hope that such vessels would be permitted to enter Dutch ports.

I have now the honor to inclose copy of his Excellency's reply, from which you will perceive that the Netherlands Government will not allow such vessels access to its ports.

I have had a conversation with M. Loudon on this subject, and although his Excellency appeared to regret the necessity, he was quite firm in maintaining that, according to his government's interpretation of international law, the admission of armed merchantmen, even if armed for defense only, was impossible.

I pointed out to his Excellency that the submarine warfare as waged by the Germans was contrary to all dictates of law and humanity, but I could not move him from his position.

I have, etc.

ALAN JOHNSTONE.

Inclosure in No. 5

Netherlands Minister for Foreign Affairs to Sir A. Johnstone
(Translation)

The Hague, April 7, 1915.

SIR: In your note of the 13th March last your Excellency was good enough to inform me that it might become necessary to provide certain British merchant vessels which sail regularly between the Netherlands and Great Britain with an armament that would only be used by them for defensive purposes. At the same time you expressed the hope that the Queen's Government would see no objection to admitting vessels thus armed into Dutch ports.

I have the honor, in reply, to inform your Excellency that the Dutch proclamation of neutrality prohibits,¹ as a general rule, belligerent

¹ See Appendix, p. 232. Text of declaration printed in Supplement to this JOURNAL, Vol. 9 (1915), p. 81.

warships as well as vessels assimilated to warships from entering Dutch ports, roadsteads, and territorial waters. As far as Dutch territory in Europe is concerned, this rule admits of no exception, except in the case of damage or by reason of stress of weather.

The Queen's Government are of the opinion that the observation of a strict neutrality obliges them to place in the category of vessels assimilated to belligerent warships those merchant vessels of the belligerent parties that are provided with an armament and that consequently would be capable of committing acts of war.

I have therefore the honor to inform your Excellency that the Queen's Government do not consider themselves entitled to admit into their ports the armed merchant vessels alluded to in your Excellency's above-mentioned communication.

While expressing my regrets at not being able to accede to the request which your Excellency was good enough to transmit, I am, etc.

J. LOUDON.

No. 6

Sir Edward Grey to Sir A. Johnstone

Foreign Office, June 9, 1915.

SIR: With reference to your dispatch of the 8th April last, I transmit to you herewith duplicate copies of a memorandum and a pamphlet¹ by Dr. A. Pearce Higgins on the practice of arming merchant ships in self-defense.

You should communicate to the Netherlands Government a copy of this pamphlet and a type-written copy of the memorandum, and should inform them that the government of every neutral state except the Netherlands, with which the question has been raised, including Spain, the United States, and the principal South American Republics, have recognized the legality of arming merchant ships in self-defense, and are admitting ships so armed into their ports on the same footing as ordinary merchant vessels. You should point to the support widely given to this traditional practice by international jurists before the war and urge that in view of the German claim to sink all British ships regardless of the lives of the crew and passengers it is more than ever necessary to insist on all rights of self-defense, including the elementary right of a human being to disable his intending murderer.

¹ Pamphlet not printed.

You should, in conclusion, impress upon the Netherlands Government that if they persist in the view which they have hitherto adopted, there is likely to be an appreciable diminution in the regular traffic of British ships with Netherlands ports.

I am, etc.

E. GREY.

Inclosure in No. 6

Memorandum on Defensively Armed Merchant Ships by Dr. Pearce Higgins, Professor of International Law at Cambridge and Lecturer at the Royal Naval War College.

As there appears to be some doubt as to the legal status of merchant ships which are armed in self-defense, the following statement may be of interest and assistance to shipowners and shipmasters:

The practice of arming ships in self-defense is a very old one. There are Royal Proclamations from the time of Charles I ordering merchant ships to be armed, and to do their utmost to defend themselves against enemy attacks. During the Napoleonic wars the prize courts of Great Britain and the United States recognized that a belligerent merchant ship had a perfect right to arm in her own defense (*The Catherine Elizabeth* (British) and *The Nereide* (United States)). The right of a belligerent merchant ship to carry arms and to resist capture is definitely and clearly laid down in both of the cases just cited.

Chief Justice Marshall of the United States, in the case of *The Nereide*, said: "It is true that on her passage she had a right to defend herself, and defended herself, and might have captured an assailing vessel."

In modern times the right of resistance of merchant vessels is also recognized by the United States Naval War Code, which was published in 1900, by the Italian Code for the Mercantile Marine, 1877, and by the Russian Prize Regulations, 1895.

Writers of weight and authority in Great Britain, the United States, Italy, France, Belgium, and Holland also recognize this right. The late Dr. F. Perels, who was at one time legal adviser to the German Admiralty, quotes with approval Article 10 of the United States Naval War Code, which states: "The personnel of merchant vessels of an enemy, who in self-defense and in protection of the vessel placed in their charge resist an attack, are entitled to the status of prisoners of war."

The most recent authoritative pronouncement on this subject comes from the Institute of International Law, a body composed of international lawyers of all nationalities. This learned society, which meets generally once a year in different countries to discuss and make proposals on points of international law, at its meeting in 1913 at Oxford prepared a Manual of the Laws of Naval Warfare which was adopted with unanimity. Article 12 of this Manual, which is in French, may be translated as follows:

Privateering is forbidden. Except under the conditions specified in Article 5 and the following articles, public and private ships and their crews may not take part in hostilities against the enemy.

Both are, however, allowed to employ force to defend themselves against the attack of an enemy ship.

The crews of enemy merchant ships have for centuries been liable to be treated as prisoners of war whether they resisted capture or not.

Crews who forcibly resist visit and capture, can not, if they are unsuccessful, claim to be released; they remain prisoners of war.

Defensively armed merchant ships must not assume the offensive against enemy merchant ships. They are armed for defense, not for attack, but if they are attacked and they are able successfully to repel the attack and even to capture their assailant, such capture is valid; the captured ship is good prize as between the belligerents.

There is some authority, as in the Italian Code and Russian Prize Regulations, for saying that an armed merchant ship has a right to go to the assistance of other national or allied vessels attacked, and assist them in making a capture. But this is by no means such a well-established rule as the rule of self-defense. It will in nearly all cases be much more important for a defensively armed ship to get safely away with her cargo than to go to the assistance of another merchant ship, for in this case the safety of both may be placed in jeopardy.

The position of the passengers on a defensively armed ship, if no resistance is made, is the same as if they were on an unarmed merchant ship. If, however, the armed ship resists, they will, naturally, have to take their chance of injury or death. Unless they take part in the resistance, they are not liable, if the ship is captured, to be taken prisoners, merely because of the fact of resistance having been offered by the ship.

No. 7

Sir A. Johnstone to Sir Edward Grey. — (Received August 2)

The Hague, July 31, 1915.

SIR: With reference to your dispatch of the 9th ultimo, I have the honor to transmit herewith copy of a note from M. Loudon giving the views of the Netherlands Government on the question of the admission of armed merchant vessels into Netherlands ports.

You will observe that M. Loudon maintains the attitude which has hitherto been adopted by the Netherlands Government to this question and states that it would be contrary to the policy of strict neutrality observed by the Netherlands Government to modify their attitude in this respect.

I have, etc.

ALAN JOHNSTONE.

Inclosure in No. 7

Netherlands Minister for Foreign Affairs to Sir A. Johnstone
(Translation)

The Hague, July 31, 1915.

SIR: In my letter of the 7th April last I had the honor to inform your Excellency that the Queen's Government do not consider themselves entitled to admit into their ports, roadsteads, and territorial waters, except in case of damage or stress of weather, the armed merchant vessels referred to by your Excellency in your official note of the 13th March last. I pointed out that the observance of a strict neutrality obliges the Netherlands Government to place in the category of vessels assimilated to belligerent warships alluded to in the proclamation of neutrality those merchant vessels of belligerent nationality which are provided with an armament, and which consequently would be capable of committing acts of war.

In his note of the 12th June last Mr. Chilton returned to this subject. He specially called my attention to the rule of international law which permits belligerent merchant vessels to defend themselves against enemy warships, and he was good enough to add to his note a memorandum and a pamphlet in support of his observations.

I have read these documents with much interest. However, there seems to me to be no connection between the above-mentioned rule

and the question whether the admission into neutral ports of a certain category of vessels of belligerent nationality is or is not compatible with the observance of a strict neutrality. This latter question lies within the province of the law of neutrality. On the other hand, the rule invoked by Mr. Chilton is part of the law of war.

A belligerent merchant vessel which fights to escape capture or destruction by an enemy warship commits an act the legitimacy of which is indeed unquestionable, but which is none the less an act of war.

The Queen's Government are of the opinion that it would be contrary to the strict neutrality which they have determined to observe from the beginning of the war not to assimilate to a belligerent warship, within the terms of the proclamation of neutrality of the 4th August, 1914, any belligerent merchant vessel armed with the object of committing, in case of need, an act of war.

Accept, etc.

J. LOUDON.

No. 8

Sir E. Grey to Sir A. Johnstone

Foreign Office, September 1, 1915.

SIR: I have received your dispatch of the 31st July informing me of the negative reply made by the Netherlands Government to the arguments put forward by His Majesty's Government in favor of the right of British merchant ships carrying armament for defensive purposes to enter Netherlands ports.

I request that you will inform the Netherlands Government that His Majesty's Government have learnt of their decision with the keenest regret. You should add that, apart from the intrinsic fact of this decision, His Majesty's Government can not refrain from expressing the strongest dissent from the view on which it is apparently based, namely, that it is part of the duties of a neutral state to treat merchant ships armed for self-defense on the same footing as warships.

In making the above communication you should say that, while adhering in every way to the views which they have already expressed on the subject, His Majesty's Government do not wish to continue the discussion of it with the Netherlands Government at the present time.

I am, etc.

E. GREY.

No. 9

Sir W. Townley to Mr. Balfour

(Telegraphic.)

The Hague, March 6, 1917.

I learn that the British steamship *Princess Melita*, with a gun mounted aft, arrived yesterday, contrary to regulations of Netherlands Government, at the Hook of Holland, and was ordered out again and left. She however returned later with a request for water, after having dismantled her gun.

As captain of *Princess Melita* feared German submarines, he refused to leave port again without convoy. He states that two enemy submarines attacked the vessel yesterday.

Dutch Minister for Foreign Affairs with whom I have taken the matter up, says, that if gun is put off, *Princess Melita* may enter port and proceed in due course to sea again.

No. 10

Sir W. Townley to Mr. Balfour

(Telegraphic.)

The Hague, March 7, 1917.

Dutch authorities ordered captain of *Princess Melita* to proceed outside territorial waters, where he dropped his gun overboard. He then returned to port and went on to Rotterdam. Vessel will load cargo there, and eventually proceed with convoy to sea.

No. 11

Mr. Balfour to Sir W. Townley

(Telegraphic.)

Foreign Office, March 10, 1917.

Your telegram of 7th March: Exclusion of defensively armed merchant ships from Dutch ports.

The Dutch admit that it is perfectly permissible by international law for merchant ships to carry guns for defensive purposes (see Orange Book, French version, p. 163), but by a rule of their own making adopted since the war began they exclude such ships from their harbors. Since the rule was adopted, circumstances have changed. On the one hand, the Germans have proclaimed their intention to sink at sight all mer-

chant ships going to or coming from Great Britain. It is not pretended by the Dutch that this practice can be justified by any rule of international law. On the other hand, it has been demonstrated that the possession of a gun adds greatly to the safety of a merchant vessel. His Majesty's Government, therefore, are clearly of opinion that, in the interests of impartial neutrality no less than of friendship, the Dutch Government should relax their rule excluding defensively armed merchant vessels from their ports. Otherwise they are assisting German submarine lawlessness and increasing the danger to our merchant vessels.

Further, at this very time the Netherlands Oversea Trust and the Dutch Government are asking that Dutch vessels shall not be compelled to go into a port of the United Kingdom for the exercise by His Majesty's Government of the belligerent right of visit and search, although the Netherlands Oversea Trust vessels have solemnly agreed to such procedure. They are asking us to forgo both our belligerent and contractual rights so as to increase the safety of their vessels at the same time as they are insisting by their own rules on increasing the danger of ours.

That is unreasonable, and the Dutch Government can not complain if we say that we can make no concessions to them unless they are prepared to show greater good-will towards us.

You should point all this out to the Dutch Government.

No. 12

Sir W. Townley to Mr. Balfour. — (Received April 11)

The Hague, April 6, 1917.

SIR: I have the honor to transmit herewith copy of a note from the Netherlands Government setting forth their reasons for refusing to allow armed merchantmen to enter Netherlands territorial waters.

I have, etc.

WALTER TOWNLEY.

Inclosure in No. 12

Netherlands Minister for Foreign Affairs to Sir W. Townley
(Translation)

The Hague, April 4, 1917.

SIR: The regulation of the Netherlands Government regarding armed merchant vessels was, as far back as 1915, the object of correspondence between the British Legation and the Queen's Government. In this connection I venture to refer to Sir Alan Johnstone's letters of the 13th March and the 12th June, 1915, and mine of the 7th April and the 31st July, 1915.

The memorandum which your Excellency was good enough to transmit to me on the 12th March last intimates, without, however, furnishing reasons in support, that there is a contradiction between, on the one hand, the Netherlands Government's recognition of the legitimacy of armed resistance by a belligerent merchant vessel to an enemy warship, and, on the other, the resolution which they took at the beginning of the war not to admit armed merchant vessels of belligerent ownership within Dutch jurisdiction.

I had already, in my above-mentioned notes, had the honor to draw Sir Alan Johnstone's attention to the fundamental distinction existing between the principles of the law of war, which decide the legitimacy of the resistance offered by belligerent merchant vessels to enemy warships, and the principles of the law of neutrality, on which depends the point whether the admission into neutral ports of warships of belligerent nationality and of certain categories of vessels assimilated thereto, in particular, armed merchantmen, is or is not compatible with the observance of a strict neutrality.

It is by applying these principles of neutrality that the Netherlands Government have forbidden as a general rule, save for certain exceptions, the presence within their jurisdiction of belligerent warships and vessels assimilated to warships; from the beginning they have placed in this last category those merchant vessels of belligerent Powers which are provided with an armament and are consequently capable of committing acts of war.

In fact, a state in the very special geographical position in which the Netherlands find themselves in relation to the belligerent nations, could not insure respect for the neutrality of the territory under its

jurisdiction, except by forbidding access to this territory not only to warships but also to every armed vessel. This exclusion, on the one hand, safeguards the country against any concealed aggression. It prevents, on the other hand, acts of violence between belligerents from being committed within our territorial waters. Lastly, it offers to each belligerent the most effective guarantee that their adversaries will not succeed in utilizing some part of this territory as a base for naval operations.

If the Queen's Government, in default of conventional regulations regarding the special question of armed merchantmen, have been obliged themselves to formulate a rule, this rule in none the less an application of the fundamental principles of neutrality and can not be qualified as an arbitrary measure.

The Queen's Government are well aware of the perilous situation in which British merchant vessels find themselves when — like those of neutrals — they are subjected without means of defense to the attacks of German submarines. They do not hesitate to admit the perfect right of such vessels to arm themselves. But the considerations which in August, 1914, determined the attitude of the government still hold good. What, however, renders the question far more serious is the fact that it would be a matter of revoking at this moment a rule of neutrality which was established at the very beginning of the war, and was duly notified later to the two belligerent parties.

Nothing could be more contrary to the very principle of neutrality than to revoke during the course of a war, and at the demand of one of the belligerents, a rule of neutrality which, owing to the course of events, whatever they may be, proves to be disadvantageous to that belligerent only.

This revocation would unquestionably assume the character of a favor, and would consequently be incompatible with the impartiality which is the distinctive feature of neutrality.

If the British Government would be good enough to place themselves in the position of a neutral government, they would realize without difficulty that the Netherlands Government could not modify their line of conduct without compromising the neutrality which they have adopted since the beginning of the war and which they are determined to observe without failing. Your Excellency's Government will further recognize that it was the British delegates who, at the Second Peace Conference, laid particular stress on the fact that the

English doctrine does not admit that a state has the right of modifying its rules of neutrality in the course of a war, except with a view to rendering them *more* strict. (*Actes*, Vol. I, p. 326; Vol. III, p. 621.)

As I have had the occasion of saying to your Excellency, it is certainly not due to want of friendship or of good-will towards the British Government that the Queen's Government are obliged to maintain their attitude. They therefore can not believe that the British Government, for the sole reason that the Netherlands Government are unwilling to depart from the line of strict neutrality that they have traced for themselves, would refuse to maintain in favor of Dutch shipowners the facilities which have already been granted them for the examination of their vessels in a British overseas port, and which are as effective, for the purpose of the exercise of the right of search, as examination carried out in a port of the United Kingdom.

The antithesis put forward in your Excellency's memorandum with regard to the facilities asked for by Dutch shipowners at the very moment when the Netherlands Government refuse to grant a favor to British vessels is therefore difficult to uphold. For, according to the law of nations, the British Government are under no obligation to effect the examination of Dutch vessels in a port of the United Kingdom, instead of carrying it out on the high seas or in a British overseas port. On the other hand, by admitting at the present moment British armed vessels within Dutch jurisdiction, the Queen's Government would be gravely lacking in observance of an obligation which flows from their neutrality.

The withdrawal of the said facilities, which would not be dictated by any necessity of control, would have the character of an unjustified measure of reprisal, since no unfriendly or unjust action on the part of the Netherlands would have caused it.

The Queen's Government make a most serious appeal to the British Government's sentiment of equity in begging them not to hinder the provisioning of the Dutch nation, which is ever becoming more difficult, by measures in no way proportionate to their own in refusing to admit armed merchantmen into Dutch ports. For it can not be denied that if Dutch ships carrying provisions enter a port of the United Kingdom, whether of their own free will or because forced to do so, they run the greatest risk of being sunk without mercy by the enemies of Great Britain. The population of the Netherlands, depending as it does to such a large extent for its provisioning on overseas products, would eventually be the victim.

The Queen's Government are persuaded that Great Britain, in order to avoid this unfortunate consequence, which she doubtless can not desire, will maintain the calling facilities recently granted to shipping, which are duly appreciated as much by shipowners as by the Netherlands Government themselves.

J. LOUDON.

No. 13

Lord Robert Cecil to Sir W. Townley

Foreign Office, May 18, 1917.

SIR: 1. The note from the Netherlands Government, setting forth their reasons for refusing to allow armed merchantmen to enter Netherlands territorial waters, transmitted to me in your dispatch of the 6th April, 1917, has received the most careful consideration.

2. The main argument of this note repeats in substance the contention advanced in the answer contained in Sir A. Johnstone's dispatch of the 8th April, 1915, that the observance of a strict neutrality imposes on the Netherlands Government the duty of treating armed belligerent merchant vessels as ships assimilated to warships within the meaning of Article 4 of the proclamation of neutrality issued by the Netherlands Government at the outbreak of the present war in 1914. I propose, therefore, to consider this argument in detail.

3. The terms of Article 4 of the proclamation of neutrality make no specific mention of merchantmen which are armed for defensive purposes: it merely prohibits the presence within the jurisdiction of any belligerent warship or vessel assimilated to a warship. To interpret these words as covering British merchant ships engaged in commercial operations carrying a gun for purposes of self-defense is neither the natural nor the reasonable construction of the language, and I think it may be shown that it is unsound, for in no sense is an armed merchant ship, such as those with which we are now dealing, assimilated to a warship.

4. The essential idea of a warship is that it is equipped for the purpose of exercising the rights which appertain exclusively to a belligerent: it is armed for the purpose of facilitating the exercise of those rights, that is to say, for purposes of offense. The British merchant vessels which carry a gun are armed solely for purposes of defense. The right of self-defense is not limited to belligerents, it may be exercised by the ships of all nations without restriction, whether neutral

or belligerent, and a merchant ship armed for purposes of defense has, therefore, nothing in common with a belligerent warship and is in no way assimilated to it. Nor does such a vessel possess any of the distinguishing features which, according to No. 7 of the conventions which were signed at The Hague in 1907, a warship ought to possess. Such a vessel is neither under the direct authority, the immediate control, nor the responsibility of the Power whose flag it flies; it bears none of the external marks which distinguish the warships of that nationality; the commander is not in the service of the state nor duly commissioned; nor are the crew subject to military discipline. In no single respect is a merchant ship which is armed solely for purposes of defense assimilated to a warship or capable of committing an act of war.

5. It may be well to consider briefly what are the vessels one might assume were intended to be covered by the phrase in Article 4 of the proclamation of neutrality — "vessels assimilated to warships." The Netherlands Government will no doubt remember that during the Second Peace Conference the British delegation put forward a proposal for extending the meaning of the term "warship" so as to make it cover certain categories of merchant ships not pursuing ordinary trading avocations, but in attendance upon a belligerent fleet, or engaged in duties bringing them into direct communication with the belligerent fighting ships. The proposal was ultimately withdrawn, but it gave rise to some very interesting discussions at that conference, and was the subject of a report on these "*vaisseaux auxiliaires*," which will be found on p. 862 of Volume 3 of the Proceedings of the Conference. Under this proposal warships were to consist of "*navires de combats*" and "*vaisseaux auxiliaires*." With regard to the second category, the report contains the following passage:

Sur ce point, son Excellence Lord Reay a expliqué le point de vue de sa délégation, qui est *d'assimiler* aux navires militaires d'une force navale, quant au traitement auquel ils sont exposés, les navires de commerce, soit employés au service de cette flotte pour un usage quelconque, soit placés sous ses ordres, soit servant à des transports de troupes, dans tous les cas, prêtant ainsi à la flotte une assistance évidemment hostile. . . . Ce n'est pas le commerce avec le belligérant qui est visé, c'est le fait pour un navire d'être au service de ce belligérant, à quelque titre, d'ailleurs, que ce soit.

6. In view of the discussions at The Hague, the natural interpretation of Article 4 of the proclamation of neutrality is that it is the vessels included in category (b) of the British proposal which are meant

to be covered by the words "(navires de guerre ou) *navires y assimilés*," not vessels engaged in purely commercial avocations which are incapable of performing an act of war, and which are in no sense employed in assisting a belligerent or in any service connected with the conduct of hostilities.

7. The argument of the Netherlands Government is that the observance of a strict neutrality obliges them to treat these defensively armed ships as assimilated to warships. The only rules of neutrality which a neutral state is obliged to enforce are those which are obligatory under the rules of international law, and the Netherlands Government will scarcely maintain that it is the principles of international law which require it to exclude from its ports a merchant ship armed for purposes of self-defense. The surest guide to the principles of international law is to be found in the practice of states, and during the present struggle no other neutral government (except perhaps that of President Carranza in Mexico) has found itself obliged by the rules of international law to deny the use of its ports to such vessels.

8. If further proof is wanted that the principles of international law do not necessitate any such regulation as that which the Netherlands Government are now insisting on, it is sufficient to mention that the practice of arming merchant ships is by no means new, and yet no state has hitherto thought it necessary to adopt the attitude which the Netherlands Government are adopting now, and no writer of repute has suggested that a neutral state is bound to do so. The Netherlands Government will, I feel sure, admit that whatever other reasons there may be for their present attitude, international law did not compel them to adopt it.

9. The enactment, if any there be, which excludes from Netherlands ports merchant vessels armed solely for defense is a rule of internal legislation and nothing more. His Majesty's Government do not question the right of the Netherlands Government to enact rules and regulations as to the use of Dutch ports in the time of war which may be stricter and more far-reaching than any which international law imposes upon them the obligation to enact. Their right to do so flows from their attributes as a sovereign state, but there are certain limitations on the legislative freedom of a sovereign state. Treaty obligations must be borne in mind, and the rules imposed for the purposes of neutrality must be impartial, for impartiality is of the essence of neutrality.

10. The practice of encouraging merchant vessels to carry arms was revived by His Majesty's Government as a measure of protection to British shipping against the raiders which it was evident the German Government intended to create in time of war by converting their merchant ships into warships on the high seas. To the latter government it was an inconvenient move, as it would interfere with the depredations which these invalidly converted warships would be able to commit. The German publicists were therefore instructed by their government immediately to deny altogether the right of a merchant ship to defend herself from a belligerent warship, and that view the enemy government, regardless of the precedents of the past, has continued to maintain. If this view prevailed, arms would be valueless to a merchant ship, even though their presence is legitimate, because she could not make use of them. By this means the arming of merchantmen would be discouraged, and, in fact, so far as is known to His Majesty's Government, the few German merchant vessels which venture on a voyage to foreign ports are not armed. A rule which closes Dutch ports to merchant ships armed in self-defense must operate with complete want of equality and impartiality as between the two belligerents because it opens Dutch ports to all German merchant vessels without opening them to all British vessels. A British merchant vessel will not, in fact, be allowed that freedom of trade with Holland which the commercial treaty between the two countries guarantees to it unless it deprives itself of the safeguards which, by the law of its own country, not less than by international law, it is entitled to adopt.

11. The note of the 4th April suggests four reasons why it is incumbent on the Netherlands Government to close their ports to armed merchant ships: That the geographical position of Holland prevents her insuring respect for her neutrality unless such a rule is adopted; that it safeguards the country against concealed aggression; that it prevents acts of violence between belligerents within the jurisdiction; and that it guarantees each of the belligerents against use by the other of Dutch territory as a base of naval operations.

12. As to these various arguments, I may say that the particular way in which the geographical position of Holland is exceptional or differs from that of other neutral countries limitrophe with the enemy countries is not explained in the note, and His Majesty's Government feel unable to appreciate that argument. Merchant ships engaged

in commerce are singularly unsuited for committing acts of aggression in foreign ports; but if one were minded to do so, an unarmed vessel would be almost as capable of committing such acts as an armed one. No foreign Power acts on the assumption that foreign merchant vessels will so abuse the hospitality of its ports as to commit acts of aggression, and if there were any real reason to apprehend such conduct on the part of British vessels, the exclusion of those only which are armed for purposes of defense would do nothing to safeguard the country from it. With regard to the third argument, if belligerents were anxious to commit acts of violence against each other, they would scarcely resort to the use of defensively armed ships for the purpose. As to the last argument, the obligation to prevent the use of their territory as a base of naval operations is incumbent on all neutral countries. His Majesty's Government are unable to see how exclusion of defensively armed merchant ships could conduce towards this result; but, even if it were so, a rule which no other Power has found it necessary to adopt can not be required for the purpose.

13. The last contention with which I find it necessary to deal is that it would constitute a serious infraction of the obligations of the Netherlands Government if they were to vary their rules of neutrality during the continuance of the present hostilities. Reference is made in support of this argument to the statement of the British delegates to the Second Peace Conference in 1907 that they could scarcely conceive of a case where it would be necessary for a neutral to modify the regulations which it had issued for the maintenance of its neutrality with a view to rendering them *less* strict.

14. This contention of the Netherlands Government might have more weight if they had issued any regulation which dealt specifically with the admission to their ports of merchant ships armed for defense. As I have pointed out, Article 4 of the proclamation of neutrality does not, on any fair construction of its terms, cover such vessels, for in no single respect are they assimilated to warships. The more cogent answer, however, to this contention is that all the principles laid down at The Hague presupposed the conduct of hostilities by the belligerents in accordance with the laws of war. They can not apply in their entirety in the presence of such circumstances as the ruthless destruction by enemy submarines of all merchant ships, whether neutral or belligerent, without warning, and irrespective of the service in which they were engaged. Under such conditions the power to exercise

the right of self-defense becomes a matter of cardinal importance and to insist on maintaining the misapplication to merchant ships engaged on purely commercial operations of a neutrality provision relating to vessels assimilated to warships in the face of such action on the part of the enemy is not an observance of neutral duty: it is a passive but none the less real and effective coöperation with the enemy in his campaign of maritime atrocity.

15. The Netherlands Government will, of course, maintain their present interpretation of the Article 4 of their proclamation of neutrality so long as they think it expedient to do so; but on their side His Majesty's Government can only declare that as the extension of that article to merchant ships armed solely for purposes of defense is incompatible with any fair construction of its terms, and as the closing of Netherlands ports to such merchant ships on the plea of neutrality is not required by the law of nations or the practice of other states, and as the provision when regarded as a municipal enactment is inconsistent with the treaty rights of Great Britain and operates exclusively to the advantage of the enemy, they must hold the Netherlands Government responsible for all losses to British ships trading with Holland so long as those vessels are, if they enter a Netherlands port, obliged to forgo their right to provide themselves with means of self-defense.

16. You will read this dispatch to the Minister for Foreign Affairs and will leave with him a copy.

I am, etc.

ROBERT CECIL.

No. 14

Sir W. Townley to Mr. Balfour

The Hague, June 20, 1917.

SIR: I have the honor to transmit herewith copy of a note from the Netherlands Minister for Foreign Affairs, setting forth the views of the Netherlands Government with regard to belligerent armed merchantmen.

I have, etc.

WALTER TOWNLEY.

Inclosure in No. 14

(Translation)

Ministry of Foreign Affairs,

The Hague, June 18, 1917.

SIR: On the 4th instant your Excellency was good enough to transmit to me a note of the British Government, dated the 18th May last, regarding the regulation applied by the Queen's Government to armed belligerent merchant vessels. This note, in the first place, points out that Article 4 of the Netherlands declaration of neutrality does not specially mention merchant vessels armed for defensive purposes, but prohibits the admission within Netherlands jurisdiction of warships or of vessels assimilated to warships. The words "assimilated to warships" should, according to the British Government, be interpreted in the light of the proposal made by the British delegation at the Second Peace Conference (Vol. III, *Actes et Documents*, p. 862) relative to merchant vessels "employed in the service of a naval force for any purpose, whether placed under its orders, or serving for the transport of troops, in any case thus affording to the fleet assistance of a clearly warlike character." They could not be applied to a merchant vessel armed with a gun solely for purposes of defense. A merchant vessel, even if provided with an armament, does not possess any of the distinguishing features which, according to the Seventh Hague Convention of 1907 (Articles 1, 2, and 3), a warship ought to possess. Besides, the essential character of a warship is that it is armed for purposes of offense, whilst a merchant vessel, even if armed, is incapable of committing an act of war or of assisting one of the belligerents.

The Queen's Government are unable to admit the accuracy of the above reasoning.

In employing, in Article 4 of the declaration of neutrality, the term "vessels assimilated to warships," the Queen's Government simply intended to exclude from their jurisdiction any vessel, the admission of which would be contrary to their duties as a neutral government, and which would menace the security of the kingdom. It is quite clear that there is no question here — as the remark of the British Government would lead one to believe — of a *technical* term, the use of

which, in a sense other than that attached to it by the British delegation at the Second Peace Conference in a totally different connection, would be excluded.

The assimilation contemplated in the declaration of neutrality does not indeed, and can not, refer to anything but the admission within Dutch jurisdiction. It does not, and can not, confer on the vessels to which it alludes the character of warships. The question whether these vessels do or do not possess the distinguishing marks of warships does not therefore arise.

The Queen's Government are unable to share the British Government's point of view, according to which vessels employed in commerce are, even if armed with a gun, incapable of committing an act of war or of assisting one of the belligerents. An armed merchant vessel undeniably possesses in its armament not only a means of defense, but a means of attack as well.

The British Government then criticize the argument of the Queen's Government that the observation of a strict neutrality obliges them to treat armed merchantmen as assimilated to warships from the point of view of admission into their waters. In their opinion, the surest guide to the principles of international law is to be found in the practice of the various states, and during the present war no other neutral government but the Queen's Government — except, perhaps, that of President Carranza — have found themselves obliged by the rules of international law to deny to the vessels in question the entry into their territorial waters.

The Queen's Government would remark, by the way, that the Governments of Sweden and Denmark have made no pronouncement upon the question, while the Government of the United States, according to Mr. Lansing's declaration in his note of 18th January, 1916, to the ambassadors of the belligerent Powers, were convinced of the correctness of the point of view according to which armed merchant vessels should be treated by neutrals as vessels of war. But apart from this, the Queen's Government, in default of any conventional regulations on this special point, are called upon to decide for themselves what, in the circumstances in which they are placed, the duties of neutrality impose upon them.

The British Government again remark that, in employing their right to issue rules regarding the admission of vessels into their ports, the Queen's Government should have regard for the obligations derived

from treaties and should take care that the rules in question are impartial, impartiality being the dominant principle of neutrality. As German merchant vessels are not armed, the rule relative to the admission of vessels within Dutch jurisdiction would open Dutch ports to all German merchantmen and not to all British merchantmen. It would thus operate in an unequal manner and with partiality. Further, British merchant shipping would not even enjoy any more the treatment assured to it by the treaty of commerce which exists between the Netherlands and Great Britain.

Now, as the British Government were aware, the Queen's Government have, since the beginning of the war, considered it necessary to close their ports to all armed belligerent merchant vessels. At that time it was not out of the question that German merchantmen would arm themselves just as British merchantmen have since done. The measure then operated in a manner absolutely impartial to all. During the course of the war, circumstances have led British merchant vessels to provide themselves with an armament in the interests of their security. If at the present moment the rule does not affect the two belligerent parties in an equal manner, the fault is evidently not due to the Queen's Government, but to the force of circumstances, by which it so often happens that the application of a rule of neutrality affects in a number of cases one of the belligerents only, without there being any question of partiality in favor of its adversary.

As regards the treaty of commerce existing between Great Britain and the Netherlands, it does not (as I have had the honor to observe recently to your Excellency in an analogous case) imply for the contracting governments the obligation to receive *in all circumstances* into their ports, the vessels flying the flag of the other contracting party. If the British Government did not share this opinion, they could not justify various measures that they have taken in the course of the war, and which are not expressly provided for in the treaties; I quote as an example the closing of certain ports of the United Kingdom to Dutch shipping, an exception of which no mention is made in the treaty in question.

The British Government further examine the four reasons which, as explained in my letter of the 4th April last, decided the Netherlands Government to close their ports to armed belligerent merchant vessels.

The first of these four reasons was the very special geographical position in which the Netherlands find themselves in relation to the

belligerent countries. The British Government declare that they are unable to appreciate how this position of the Netherlands is exceptional or differs from that of other neutral countries.

It is sufficient to recall the fact that no other neutral country is situated so close as the Netherlands to the principal theater of the war on land and on sea, and that consequently no other country ran the same degree of risk of seeing its coastal waters, not to mention the rivers which flow into these waters, utilized by the belligerent Powers. These considerations held good especially at the beginning of the war before Belgium was a belligerent party, and when it might consequently be expected that British as well as German merchantmen would use the port of Antwerp. They lost nothing of their value when Belgium became a belligerent party, and when at first only English vessels, and after the capture of Antwerp German vessels only, could enter or leave that port. Lastly, the risk of an encounter near the Dutch coast between the naval forces of the two belligerent parties and their merchant vessels is obvious.

The second of the four reasons was that the exclusion of armed merchantmen assured the security of the Netherlands against any concealed aggression.

The British Government hold the view that vessels destined for commerce are singularly unsuited for committing acts of aggression in foreign ports; but that, if there were an intention of committing such acts, an unarmed vessel would be no less capable of them than an armed one.

Now, if armed merchantmen had been admitted into Dutch ports, the possibility of a large number of these vessels collecting in Dutch waters, and therefore of a real danger, was in no way unlikely.

The third reason was that the regulation issued prevents acts of violence from being committed between the belligerents in our territorial waters. The British Government state that if the belligerents desire to commit acts of violence against each other, they will certainly not resort to the use of defensively armed ships for this purpose.

In putting forward the reason in question, the Queen's Government did not have in view the case of belligerents coming into Dutch ports with the fixed intention of committing acts of violence against their adversaries, but the case of merchant vessels of the opposing sides unexpectedly finding themselves at the same moment in those ports. If they were unarmed, they would not be tempted to commit acts of

violence against each other; but, having an armament, they might doubtless be so tempted.

The fourth reason was that the measure adopted by the Queen's Government offers the most effective guarantee to each of the belligerents that their adversary will not succeed in utilizing any part of Dutch territory as a base of naval operations. This reason does not appear to be clear to the British Government.

It is evident that armed merchantmen, being capable of committing acts of war, could abuse neutral territory as a base of action against the enemy quite as well as warships properly so called.

Lastly, the British Government take up the argument of the Queen's Government that it would be contrary to the very principle of neutrality to revoke in the course of a war and at the demand of one of the belligerents a rule of neutrality which owing to the course of events proves to be disadvantageous to that belligerent only, an argument which the Queen's Government thought would be all the more conclusive in that it was the British delegates who, at the Second Peace Conference, laid particular stress on the fact that English doctrine does not recognize that a state has the right to modify its rules of neutrality during the course of a war, except with a view to rendering them *more* strict.

The British Government are of the opinion that this argument would have more weight if Article 4 of the declaration of neutrality had made special mention of armed merchant vessels.

The revocation of a rule of neutrality established since the beginning of the war, whether it be expressed word for word in the declaration of neutrality or not, is none the less contrary to the principles of the law of nations. The British Government's remark is still less well-founded, as they have been aware of the rule in question since the first days of August, 1914. Besides, the official declarations contained in the Orange Book presented to the States-General in October, 1915, and reproduced in the *Recueil de diverses communications du Ministre des Affaires Étrangères aux États-Généraux par rapport à la neutralité des Pays-Bas et au respect du droit des gens*, are certainly equivalent to a mention in the declaration of neutrality.

In the light of the above, the Netherlands Government find it difficult to take seriously the allegation that their attitude is equivalent to a real, though passive, coöperation in the submarine warfare. They can therefore only decline without hesitation the responsibility which His Britannic Majesty's Government declare their desire to impose

on them for all losses of British ships, trading to Dutch ports, which may have been obliged to forego their armament in order to be admitted.

Accept, etc.

J. LOUDON.

No. 15

Mr. Balfour to Sir W. Townley

Foreign Office, July 17, 1917.

SIR: I duly received your dispatch of the 20th ultimo, and have read with attention the note from the Netherlands Government inclosed therein, containing their reply to the arguments put forward in my dispatch of the 18th May against the exclusion of defensively armed merchant ships from Netherlands ports.

2. The Netherlands Government, after a summary of certain of those arguments, begin by asserting that they do not, in regarding such vessels as "assimilated to warships" for the purpose of applying their neutrality regulations, use the words in the sense in which they were used in the proceedings at the Second Hague Conference, but in a wider and less technical sense. They appear to have meant by the expression, in using it in their regulations, any ship which they might at any time choose to regard as assimilated to a warship, instead of meaning a ship such as had hitherto been generally considered as properly to be classed with warships. It seems unfortunate that they should, without making the fact clearer, use the term in such a sense in a set of published regulations which are based for the greater part on a Hague Convention, and the phrases of which one would naturally expect to be used in a sense conforming to that given them in discussions at the Hague Conference. The Netherlands Government virtually confess that the inclusion of defensively armed merchant ships within the definition of vessels "assimilated to warships," as used in their decree of neutrality, is an arbitrary decision, and there should therefore be no difficulty for them in varying the interpretation of the words which they have adopted.

3. M. Loudon does not dispute the fact, which was pointed out in my previous dispatch, that no neutral government during the present war, except possibly that of General Carranza in Mexico, have thought themselves bound to exclude armed merchant ships from their ports.

They can only point out that two countries with which the question of the admission of such vessels has not, so far as I am aware, been raised by any belligerent government, have not taken any public decision upon it; and that the United States Secretary of State, in a note advocating, in the interests of humanity, a compromise between the opposing belligerent groups in regard to their methods of naval warfare, expressed an opinion at variance with the ancient and settled practice of his own country. The Netherlands Government, therefore, can not contend that there is anything in the practice or theory of other countries to justify their attitude. The practice of those countries is universally contrary to the Netherlands practice. The theory, so far as it has been formulated, is opposed to the theory maintained by the Netherlands Government, except, indeed, in Germany, where, as so often, it has been hastily evolved, by order of the German Government, to suit the special interests of the country.

4. The Netherlands Government again contend that they have the duty of excluding armed merchant ships from their ports, because they could not otherwise insure respect for their neutrality. Their grounds for thinking this are totally inadequate. They endeavor to defend their rule by reference to the special situation of their country and to the effects of their rule in safeguarding Netherlands neutrality. They state that armed merchant ships are more capable than unarmed ships of committing in Netherlands ports acts of violence against the Netherlands and against enemy shipping; they maintain that armed ships are likely to be tempted to use their arms in a neutral port, and that their exclusion is an additional guarantee that Netherlands ports and waters will not be used as a base by one belligerent to the detriment of the other.

5. These arguments contain, it is fair to say, a modicum of truth, but they are quite insufficient to show the existence of a duty on the part of the Netherlands Government to deny facilities to armed merchant ships. Apart from the fact that the fears expressed as to the possible violent conduct of such vessels in neutral ports assume exceptional bad faith and lack of restraint on the part of the masters of the ships concerned, the arguments put forward apply to all neutral countries, and not specially to the Netherlands more than to other countries, the ports of which are used by merchant shipping of the opposing belligerents. They apply, too, with much greater force to warships than to defensively armed merchant ships. Yet it is doubtless recog-

nized by the Netherlands Government that a neutral country is under no obligation to exclude, in the interests of its neutrality, belligerent warships from its ports.

6. It is apparent from the foregoing that it is not the text of the neutrality proclamation which constrains the Netherlands Government, but merely the interpretation of it which has been adopted, and that they are not supported by the theory and practice of other countries, nor justified by special circumstances in denying to armed merchant ships access to their ports and waters. They have, as I anticipated, not ventured to contend that it is the principles of international law which require them to enforce such a rule. On what else do they rely? They claim that they are bound, if they are not to commit an-unneutral act, to abstain from altering during the course of the war a rule of neutrality when once published, and point out that the British delegates at the Second Peace Conference maintained that no such alteration should be permitted, except in the direction of greater strictness.

7. This proposal was not, however, accepted by the Conference, and the principle which opposes alterations of any kind in published rules of neutrality is not even technically absolute. The appeal made to it by the Netherlands Government was, moreover, answered in my previous dispatch by an argument which they have totally ignored. I pointed out that "all the principles laid down at The Hague presupposed the conduct of hostilities by the belligerents in accordance with the laws of war," and that "they can not apply in their entirety in the presence of such circumstances as the ruthless destruction by enemy submarines of all merchant ships, whether neutral or belligerent, without warning," a condition of affairs in which "the power to exercise the right of self-defense becomes a matter of cardinal importance."

8. Perhaps the most serious fact with which the world is faced today is the abandonment by the German Empire, in its warfare at sea, of the rules of war and the morality which is the basis of international law. The Netherlands Government apparently do not think this retrogression towards the barbarous methods of ancient warfare worthy of a single word. Their adherence to a position, based on technicalities, which favors the German Empire's immoral methods would, even if those technicalities were not open to criticism as such, obviously be unfortunate, for it is evidently not calculated to help in restoring the outraged principles of international morality.

9. You will read this dispatch to the Netherlands Minister for Foreign Affairs, and will leave with him a copy.

I am etc.

A. J. BALFOUR.

No. 16

Sir W. Townley to Mr. Balfour.

The Hague, August 16, 1917.

SIR: I have the honor to transmit herewith copy of the reply of the Netherlands Minister for Foreign Affairs to your dispatch of the 17th ultimo, on the subject of the exclusion of defensively armed merchant ships from Dutch ports, copy of which I left with his Excellency on the 25th ultimo, after having read it to him in accordance with the instructions contained in your above-mentioned dispatch.

I have, etc.

WALTER TOWNLEY.

Inclosure in No. 16

M. Loudon to Sir W. Townley

(Translation)

The Hague, August 15, 1917.

SIR: I have had the honor to receive from your Excellency copy of a note from the British Government dated the 17th July last, containing their observations in reply to my letter of the 18th June, 1917, regarding the regulation applied by the Queen's Government to armed belligerent merchant vessels.

In reply to these observations, I have the honor to bring the following to your Excellency's notice:

The Queen's Government did not say that in their declaration of neutrality they employed the expression "vessels assimilated to war-ships" in any sense other than that attached to it by the Second Peace Conference. They did say and they still maintain that the Conference did not attach to this expression any special meaning which would place it in the category of technical terms.

The British Government, to prove the contrary, refer to the proposal of their delegates relative to the definition of the term "auxiliary vessels." The passage from the Minutes quoted in the British Government's note of the 18th May last mentions that this proposal tended

to assimilate these auxiliary vessels to warships. The proposal was withdrawn, and as a result no definition was found in the law of nations for the term "auxiliary vessels." In these circumstances it is impossible to maintain that the incidental use of the expression "assimilated to warships" has made this expression a technical term.

It is true that the Dutch declaration of neutrality does not enumerate the categories of vessels which are assimilated to warships as regards their admission within Netherlands jurisdiction, but the British Government have since the beginning of the war been aware — through the precise information given to the British naval attaché, Captain Henderson, by my colleague the Minister of Marine in person in August, 1914 — that the Queen's Government included armed belligerent merchant vessels in the expression "vessels assimilated to warships." This interpretation did not at the time evoke any protest from the British Government, who moreover in their regulations for prize court procedure likewise assimilate armed vessels to warships (Prize Court Rules, 1914, Order I).

The Queen's Government can not recognize that a modification of the interpretation of their neutrality declaration would be in itself less serious from the point of view of neutrality than modification of the declaration properly so called or of a rule enacted to meet cases not provided for in the declaration.

The law of nations does not prescribe for neutrals the duty either of admitting armed belligerent merchant vessels within their jurisdiction, or of refusing them entry. It leaves them to determine for themselves their line of conduct on this point. The British Government can not therefore contest, nor have they moreover contested, the legitimacy of the Netherlands regulation. But they reproach the Netherlands Government with being the only neutral government to adopt such an attitude. I have already had the honor of pointing out to your Excellency that this is not quite exact, certain neutral Powers having made no pronouncement on this subject, and the United States Government, in a note dated the 18th January, 1916, having clearly expressed themselves in the sense that armed merchant vessels should be treated by neutrals as warships (cf. the State Department's publication entitled "European War," No. 3, pp. 163, 164).

The British Government set aside this declaration of the United States Government on the pretext that it was expressed in a note conceived with a conciliatory object. It is true that the United States

Government addressed their note to the Allied Governments in a spirit of conciliation, but of course in the sense that they were proposing, in the interests of humanity, that the belligerents should conform on both sides to the prescriptions of international law as understood by the United States. They expressly added that they were convinced of the justice of the view that armed merchant ships should be treated by neutrals as warships.

The British Government do not think it necessary to attach any importance to the arguments put forward by the Queen's Government to prove that the Netherlands regulation was necessary in order to insure the neutrality of Dutch territory.

They do not refer to the most important contingencies which I mentioned to your Excellency under this head as being likely to threaten the integrity of the domain under the jurisdiction of the Netherlands. They do not appear to wish to recognize the fact that these contingencies might have a particularly serious character owing to the geographical position of the Netherlands, between Great Britain and Germany — a position in which no other neutral in the same measure stands.

They confine themselves to considering the case which is the least to be apprehended — that of an act of violence due to the bad faith and lack of self-restraint of the captain of an armed merchant vessel.

The British Government can not, however, refuse to admit that one of the first duties of the Queen's Government was to insure the integrity of their territory, and that this integrity would be seriously endangered if one of the other contingencies to which I alluded happened to occur. In these conditions it was their duty to exclude all belligerent vessels.

The British Government can not justifiably contest either the legitimacy of the Dutch regulation, or, if they would place themselves for a moment in the standpoint of the Netherlands, the gravity of the reasons which caused them to adopt it. They can not, furthermore, maintain that the modification of a rule of neutrality during the war would not be contrary to the law of nations, seeing that they have themselves done the opposite in a memorandum addressed to the United States Government on the 23d of March, 1916, in which it is textually stated: "Such a modification indeed would be inconsistent with the general principles of neutrality as sanctioned in paragraphs 5 and 6 of the preamble to the 13th Convention of The Hague concerning maritime neutrality" ("European War," No. 3, p. 188).

Your Excellency's Government would seem to be of the opinion that the Netherlands Government should nevertheless depart from their present line of conduct in order to show how much they condemn the method by which the German navy carries on war.

Whatever may be their personal opinion on this last point, an opinion that they are not called upon to express to the British Government, the Netherlands Government consider that it would be contrary to a just conception of neutrality if they allowed themselves to be influenced by a consideration of this nature to modify their rules of neutrality or the interpretation of these rules as established by them. In conformity with the standpoint in which they have always placed themselves, towards Great Britain as well as others, the Queen's Government do not set themselves up in judgment upon the measures taken by the belligerents to do harm to one another. They only protest against these measures in so far as they injure the rights of neutrals. The protests, which they have never failed to make, especially as regards submarine warfare, are a proof of this.

J. LOUDON.

No. 17

Mr. Balfour to Sir W. Townley

Foreign Office, September 8, 1917.

SIR: In your dispatch of the 16th ultimo, you transmitted to me a copy of a reply which you had received from the Netherlands Minister for Foreign Affairs to the observations contained in my dispatch of the 17th July in regard to the refusal of the Netherlands Government to admit defensively armed merchant vessels into Dutch ports.

It is apparent that further detailed argument on the subject would serve no useful purpose, and I wish only to draw attention to the most obvious general conclusions which emerge from the correspondence which has passed between His Majesty's Government and the Netherlands Government.

In the first place, the Netherlands Government have been unable to show that they do not stand alone among neutral governments, save for the doubtful exception of General Carranza's administration in Mexico, in adopting a rule excluding defensively armed merchant ships from their ports. They attempt to derive comfort from the fact that the Governments of Sweden and Denmark have not had

occasion to make their views known and from certain observations made in an informal letter addressed by the United States Secretary of State on the 18th January, 1916, to the diplomatic representatives of the Allied Governments in Washington. A few remarks must be made with regard to this letter.

It was written, as a perusal of it shows, with the object of bringing about, if possible, by agreement a cessation of the attacks made by German submarines without warning on merchant ships of the Allied and neutral countries and a confinement of submarine warfare within the limits imposed by the general rules of international law and the principles of humanity. Mr. Lansing suggested that the Allied Governments might be willing, in order to achieve this end, to accept a rule under which merchant vessels of belligerent nationality should be prohibited from carrying armament. Such an agreement would have involved the abandonment of the rule followed and upheld by the United States since the creation of the republic. His note concluded with the words "my government is impressed with the reasonableness of the argument that a merchant vessel carrying an armament of any sort, *in view of the character of submarine warfare and the defensive weakness of undersea craft*, should be held to be an auxiliary cruiser and so treated by a neutral as well as by a belligerent government, and is seriously considering instructing its officials accordingly." The sentence was no doubt intended as an indication that, unless the suggested compromise were seriously considered, armed merchant ships might in the future be excluded from United States ports. The Netherlands Government, in quoting Mr. Lansing merely as saying that he "was convinced of the justice of the view that armed merchant ships should be treated by neutrals as warships," are obviously misrepresenting him.

The agreement suggested by Mr. Lansing was not acceptable to the Allied Governments, and the United States Government shortly afterwards, in a memorandum dated the 25th March, 1916, put on record their view of the legal status of armed merchant ships, which was entirely consonant with the traditional practice of the United States in treating such vessels as ordinary merchantmen; this practice had already, since September, 1914, been put into force during the present war.

The second important observation suggested by the correspondence is that the Netherlands Government have not attempted to answer

the argument of His Majesty's Government that the discussions at the Second Peace Conference, including the contention of the British delegates that it should not be permissible to alter during the course of a war a rule of neutrality once laid down, presupposed the conduct of war by belligerents in accordance with the rules of international law, the flagrant violation of which is, as a matter of fact, an essential feature of the German submarine warfare. This circumstance obviously deprives of all force the appeal of the Netherlands Government, sufficiently weak in itself, to technical legal objections to a modification of their unparalleled regulation.

You should communicate a copy of this dispatch to the Minister for Foreign Affairs, informing him that His Majesty's Government, while deeply regretting the attitude maintained by the Netherlands Government, do not propose for the present to continue the discussion of the question at issue.

I am, etc.

A. J. BALFOUR.

No. 18

Sir W. Townley to Mr. Balfour

The Hague, October 23, 1917.

SIR: In compliance with your instructions, I duly communicated to the Netherlands Minister for Foreign Affairs a copy of your dispatch of the 8th ultimo in regard to the refusal of the Netherlands Government to admit defensively armed merchant vessels into Dutch ports. I at the same time informed his Excellency that His Majesty's Government, while deeply regretting the attitude maintained by the Netherlands Government, do not for the present propose to continue the discussion of the question at issue.

I have now the honor to transmit copy of M. Loudon's reply containing the comments of the Netherlands Government on the various points raised in your above-mentioned dispatch and adhering to the view expressed by His Majesty's Government that a further discussion of this question would present no advantage.

I have, etc.

W. TOWNLEY.

Inclosure in No. 18

M. Loudon to Sir W. Townley
(Translation)

The Hague, October 22, 1917.

SIR: In your note of the 13th September last your Excellency was good enough to communicate to me a copy of a note from the Secretary of State for Foreign Affairs, dated the 8th September, respecting the admission of armed merchant vessels of the belligerents into Netherlands ports, which contained the reply to the note which I had addressed to you on the 15th August last.

In that note I had again set out the reasons which made it the duty of the Queen's Government to maintain the decision which they had taken in the matter at the beginning of the war. Since the Secretary of State refrains from replying to it, so far as the main question is concerned, I may restrict myself to making the observations suggested to me by the two particular points raised by Mr. Balfour.

In the first place, I must point out that the British Government have not justified their assertion that the Queen's Government are the only neutral government to consider that there are serious reasons against admitting armed merchant ships of the belligerents into neutral ports.

Of the three countries (Denmark, Norway, and Sweden) of which the geographical position in relation to the theater of war can in a measure be compared with that of the Netherlands, two, Denmark and Sweden, have not expressed their views on the subject. The Government of the United States of America admitted such vessels, subject to certain restrictions, into their ports. But the publications of the Department of State show that that government entertained grave doubts as to whether any admittance of such ships was not incompatible with a strict observance of the duties of neutrality. Thus it appears from the paper "European War," No. 2, pp. 41-42, that in order to remove the preoccupation of the American Government in the matter, the British Government assented to the British armed merchant ship *Merrion*, which had arrived in a port in the United States, disembarking her guns before putting to sea. It is known, moreover, that for the same reason no British armed merchant ship called at a port in the United States for a period of about a year after the case of the *Merrion* and that of the *Adriatic*, which is also referred to in the above-men-

tioned document (pp. 41-42). The same paper contains (pp. 45-46) a letter in which the United States Government, while fully admitting that a merchant ship has the right to arm for purposes of self-defense, make it known that they disapprove of a practice which compels a neutral to express an opinion as to the intended use of a vessel, and thus to incur responsibility in the event of this opinion subsequently proving wrong. In these circumstances, it is all the more difficult to maintain that the Queen's Government have wrongly interpreted the words "my government is impressed with the reasonableness of the argument that a merchant vessel carrying an armament of any sort, in view of the character of submarine warfare and the defensive weakness of undersea craft, should be held to be an auxiliary cruiser and so treated by a neutral as well as by a belligerent government," which show clearly that in the opinion of the United States Government an attitude of the kind adopted by the Netherlands since the outbreak of the war was reasonable.

In the second place, the Secretary of State affirms that the Queen's Government have not even attempted to contest the argument of the British Government setting aside the applicability of the rule that a neutral Power should not modify its neutrality regulations in the course of a war except to render them more strict. The British Government consider that the Queen's Government could rightly neglect this rule on the ground that the Second Peace Conference only laid it down on the supposition that belligerents would conduct war in a manner conforming to international law.

I venture to recall to your Excellency that I have already contested this argument, especially at the end of my note of the 15th August. I am not aware that the conventions of The Hague or general international law contain a rule, or the records of the Second Peace Conference even an indication, that a neutral state should alter its neutrality regulations in favor of one belligerent party because of the manner in which his opponent conducts war. As for the fact that the warlike operations of one belligerent injure the rights and interests of the neutral, it is for the neutral to decide without any intervention on the part of the other belligerent, whether the fact gives him occasion to depart from the state of neutrality which he has announced.

Agreeing with the view of the British Government that the discussion of this question should be closed, I have, etc.

J. LONDON.

No. 19

*Mr. Balfour to Sir W. Townley**Foreign Office, November 14, 1917.*

SIR: I have received your dispatch of the 23d ultimo, inclosing a copy of a note from the Netherlands Minister for Foreign Affairs replying to the observations contained in my dispatch of the 8th ultimo with regard to the refusal of admittance of defensively armed merchant ships into Dutch ports.

I had not intended to extend the correspondence on this subject, seeing that all the arguments by which the Netherlands Government have attempted to show that there is a duty upon them to exclude such vessels from their ports have already been exhaustively discussed. It is necessary, however, to make a few observations in reply to M. Loudon's last note, since it attributes to His Majesty's Government an attitude which they have never taken up, and it is essential that this should not pass uncorrected.

His Majesty's Government have never asserted, as alleged by the Minister for Foreign Affairs, that no neutral state but the Netherlands considered that there were serious reasons against the admission into neutral ports of merchant ships of the belligerents carrying defensive armament. They have merely pointed out that "during the present struggle no other neutral government (except perhaps that of President Carranza in Mexico) has found itself obliged by the rules of international law to deny the use of its ports to such vessels," and that "no state has hitherto thought it necessary to adopt the attitude which the Netherlands Government are adopting now." These statements were and are perfectly correct, and all that M. Loudon has said in reply to them leaves them standing in every particular. The Minister for Foreign Affairs attempts to defend the attitude of his government by reference to some hesitation which was at one time expressed by the United States Government when neutral. His Majesty's Government desire nothing better than the adoption by the Netherlands of the doctrine and practice of the United States as neutrals in this matter.

I need say little in reply to the concluding passages of M. Loudon's note. His Majesty's Government have, of course, never contended that there is any rule of international law which compels the Netherlands Government to reverse their policy. They have merely con-

tended, and I trust have established, that the Netherlands rule is unnecessary and unneutral, and that the government is under no obligation to maintain it. The practice of the numerous other neutral governments who have had to consider the question during the present war shows that, with the doubtful exception of General Carranza's Government, they one and all share the view that action upon the lines taken by the Netherlands Government is not incumbent upon a neutral state.

I request that you will communicate the foregoing remarks to the Minister for Foreign Affairs.

I am, etc.

A. J. BALFOUR.

APPENDIX

Article 4 of Netherlands Proclamation of Neutrality

(Translation.)

"Warships of a belligerent and vessels of a belligerent assimilated to warships shall not be admitted within the jurisdiction of the State."

DIPLOMATIC CORRESPONDENCE BETWEEN THE NETHERLANDS AND THE ENTENTE ALLIES REGARDING THE ADMISSION OF ARMED MERCHANT VESSELS TO DUTCH PORTS¹

[The correspondence with Great Britain was also published by that government and is reproduced in this Supplement from the British Parliamentary Paper. The following collection contains the correspondence, published by the Netherlands, with other governments, with one additional note from Great Britain not included in the British Paper. — Ed.]

Note from the British Legation to the Netherland Ministry for Foreign Affairs

His Britannic Majesty's Chargé d'Affaires is instructed to call the immediate attention of the Netherland Government to the well-known rules of international law embodied in The Hague Convention No. 13 of 1907. A neutral government is bound by these rules to prevent the arming or fitting out or departure from its jurisdiction of any merchant vessel which is intended to be employed for warlike purposes.

As Germany claims the right to convert merchant vessels into ships of war on the high seas, neutral governments are called upon to exercise the greatest vigilance to prevent the departure of any German vessel capable of being so converted if there are good grounds for suspecting her intentions. Reasonable grounds for suspicion would exist if there were signs of shipping ammunition, concealing arms and ammunition on board, mounting of guns, taking unnecessarily large quantity of coal, and especially painting ship a warlike color or refusing to take passengers on board if the vessel is fitted for passenger accommodation.

A neutral Power renders itself responsible for any damage to shipping, trade, and other interests which may be caused by such vessels thereafter if it does not exercise due diligence in preventing the departure in such circumstances.

¹ Diplomatieke Bescheiden Betreffende de Toelating van Bewapende Handelsvaartuigen der Oorlogvoerenden en Onzijdigen Biennen het Nederlandsche Rechtsgebied, Augustus, 1914 – November, 1917. 's Gravenhage — Algemeene Landsdrukkerij — 1917.

His Majesty's Chargé d'Affaires is instructed to express the confident hope of His Majesty's Government that if the Netherland Government have not already issued the necessary orders to prevent any abuse of their neutrality, they will do so immediately.

A full investigation by the local authorities should be made of any vessels whose movements or proceedings are of a nature to give rise to suspicion and such vessels should be refused clearance and prevented from leaving national waters until this has been done.

His Majesty's Chargé d'Affaires is also directed to instruct all British consular officers to report immediately to His Majesty's Legation any suspicious cases, and at the same time to warn the local authorities of the consequences which might ensue from any negligence on their part.

The Hague, 11th August, 1914.

Note from the German Legation to the Netherland Ministry for Foreign Affairs

According to information which has reached the Imperial Government, the English steamer *Brussels* was, during its stay at Rotterdam early in the year, armed with guns placed on the lower deck.

Many English merchant ships are similarly armed for the purpose of offering armed resistance to German warships.

Such armed resistance is contrary to the law of nations and would give warships the right to sink the boat in question, together with its crew and the passengers on board. It would seem to be very doubtful whether such boats might demand admission to the ports of a neutral state. In any event, they should not enjoy more favorable treatment than that accorded by such a state to warships intended for legitimate naval warfare. They should therefore at least be subject to the laws enacted by that state with regard to the length of time belligerent warships shall be allowed to remain in its ports.

The Imperial Government, in consideration of the foregoing facts, has the honor to address the Queen's Government, with the request that it take such action as is necessary, so that armed merchant ships in the ports of the Netherlands shall be treated in the same way as vessels of war.

The Hague, August 2, 1915.

Note from the Netherland Ministry for Foreign Affairs to the German Legation

In reply to the note from the Imperial German Legation of August 2d last, J. No. 4629, the Royal Ministry of Foreign Affairs has the honor to inform the Legation that the admission of belligerent armed merchant ships to the ports, roadsteads, and territorial waters of the Netherlands is governed by the rules relative to the admission of belligerent warships.

Belligerent armed merchant ships come within the classification of "vessels assimilated to belligerent warships," provided for in Article 4 of the Netherland proclamation of neutrality, dated August 6, 1914.

The Queen's Government does not share the opinion expressed in the notice of the Imperial Legation that armed resistance is contrary to the law of nations. It believes, on the contrary, that that law permits belligerent merchant ships to defend themselves against enemy warships.

Nevertheless a belligerent merchant ship which shows fight in order to escape from being captured or destroyed by a warship of the enemy commits an act of war.

The Queen's Government was of the opinion that the strict neutrality which it had resolved to observe from the very beginning of the war imposed upon it the duty of assimilating any belligerent merchant ship, armed for the purpose of committing an act of war in case of need, to belligerent warships in the terms of the neutrality proclamation.

The neutrality proclamation prohibits, as a general rule, belligerent warships, as well as vessels assimilated to them, from entering the ports, roadsteads, and territorial waters of the kingdom (in Europe). This rule is subject to exceptions only in case of damage or of stress of weather at sea.

Therefore no belligerent armed merchant ship has been admitted to a port of the kingdom during the war.

As for the British steamer *Brussels*, mentioned in the Imperial Legation's note, this vessel was subjected to a thorough special inspection on March 30th last by the Netherland authorities at Rotterdam. This inspection showed conclusively that the vessel was not armed.

The Hague, September 7, 1915.

Note from the French Legation to the Netherland Ministry for Foreign Affairs

It appears from the exchange of views which took place between the Royal Government and the Government of the Republic in the month of December last, on the subject of the admission of merchant ships armed for self-defense to Netherland ports, that the Royal Ministry of Foreign Affairs considers such admission contrary to the Netherland neutrality declaration of August 1, 1914, by virtue of which merchant ships armed for self-defense are subject to the same rules as vessels of war.

It would not, however, seem to be possible that the Netherland neutrality proclamation could have reached any decision in this respect, and have enacted, for example, that armed merchant ships would be assimilated to warships; for the question of armed merchant ships, as it presents itself at the present day, is a brand-new question, or at least one which, it would appear, should not have arisen in international relations since the Treaty of Paris of 1856. It is the methods of submarine warfare, the torpedoing of innocent vessels, the destruction of their crews and cargoes, that have revived the insecurity at sea which formerly prevailed. Under these conditions governments would be seriously failing in their duty of protection toward the sailors of their merchant marine and the passengers sailing under their flag if they refused, contrary to the traditions formerly followed in all countries, to allow merchant ships the means of defending themselves on the high seas. To prohibit them from entering ports would be equivalent either to denying them this right, or to refusing to allow them to have intercourse with countries exercising this right. This would be an unfriendly attitude, which it is certainly neither the desire nor the intention of the Royal Government to assume.

It should be added that the new conditions with which we are confronted are the immediate and direct consequence of the "new decisions" which were communicated to the Royal Government by the German Legation at The Hague on January 31st and which justified the Royal Government's protest against the new régime which these "decisions" had the effrontery to establish, "in violation of the law of nations and, eventually, of the laws of humanity."

We are, therefore, warranted in believing that the question of armed merchant ships could not have been considered at the time when

the Netherland neutrality declaration was drawn up and that the Royal Government is still entirely free to decide that question.

Moreover, according to the official documents which it has published, the Royal Government does not dispute the legality of arming vessels, as practiced. It states that this question belongs to the domain of international law, while the question of admitting armed vessels to neutral ports belongs to the domain of neutrality and can be settled by each country as its interests demand.

In our opinion, this contention is in conflict with the principles of international law and, in particular, appears to be contrary to the decisions of the Second Hague Conference.

If the conditions or restrictions with regard to admission imposed upon belligerent vessels by a neutral Power are indeed a matter for domestic legislation on neutrality, it is nevertheless on condition that these conditions or restrictions do not violate international law. Now the question whether or not a foreign vessel has the character, the rights, and, as in the present argument, the obligations of a warship is a question of an international nature governed by international law. The report accompanying Hague Convention VII of 1907 brings this point out: "Certain rules of neutrality," says the report, "— sometimes local, such as passage through certain straits; sometimes general, such as the limit of stay or of victualing in neutral ports — apply only to warships" (*Actes de la Seconde Conférence de La Haye*, Vol. 1, p. 240). And Convention VII stipulated as a corollary of the Declaration of Paris of 1856 that there should be no other warships than the vessels of the naval fleet (*ibid.*, p. 244), and that, in order to be regarded as a warship, a vessel must be under the direct authority, immediate control, and responsibility of the state, its captain must be in the service of the state, and its crew must be under military discipline.

Therefore, only merchant ships converted into warships according to the provisions of the Seventh Hague Convention of October 18, 1907, may be assimilated to warships, and the assimilation of armed merchant ships to warships can not be admitted on any grounds in international law. It could not be otherwise, for such an assimilation would have the effect of giving purely and simply to merchant ships armed for self-defense the same rights as to warships. This would imply the reestablishment of privateering by the act of the neutral Powers that should adopt this point of view, thus assuming the heaviest of responsibilities.

Hence the Legation of France is pleased to hope that the Royal Government will see in the admission of warships armed for self-defense both a strict and correct duty of neutrality toward belligerents, and a recognition of principles that have long been universally recognized and codified by the law of nations.

The Hague, March 15, 1917.

Note from the Netherland Ministry for Foreign Affairs to the French Legation

The institution of armed merchant ships did not arise in the course of the present war. It was inaugurated by the British Government, in spite of the fact that at the Second Hague Peace Conference it was regarded as excluded (see the observations of Captain Ottley, delegate of Great Britain, and Captain Behr, delegate of Russia, Acts, Vol. III, p. 1010). Consequently the Queen's Government had, in the month of May, 1913, submitted to the commission which it had appointed to draw up the Netherland proposals with regard to the program of the Third Peace Conference, the question as to what treatment should be applied to such vessels in time of war and in time of peace.

In its report presented on March 28, 1914, the commission expressed the opinion that armed merchant ships of a belligerent Power should not be admitted to the dominion of the Netherlands except on the same footing as belligerent ships of war.

When war broke out, the Queen's Government forbade, as a general rule, with certain exceptions, the presence within its jurisdiction of belligerent warships and vessels assimilated thereto. From the outset it has, in conformity with the opinion of the aforesaid commission, included in this latter classification merchant ships of the belligerent Powers that are provided with an armament and therefore suitable for committing acts of war.

Indeed, a state in the very peculiar geographical situation in which the Netherlands finds itself with respect to the countries at war could insure respect for the neutrality of the dominion over which it has jurisdiction only by forbidding not only warships but all armed vessels as well from entering this dominion. This exclusion made the country on the one hand secure against any masked attack. It prevented, on the other hand, the commission of hostile acts between belligerents in Netherland territorial waters. Finally, it offered each belligerent

the most effective guarantee that his adversary would not succeed in utilizing some part of this dominion as a base of naval operations.

The rule enacted by the Queen's Government is therefore the logical consequence of the fundamental principles of neutrality, notably of the principle sanctioned by Article 5 of Hague Convention XIII of 1907.

The French Government, however, disputes its legality. Its argument may be summed up as follows: If the conditions or restrictions with regard to admission imposed upon belligerent vessels by a neutral Power are a matter for domestic legislation on neutrality, it is nevertheless on condition that such legislation shall not violate the law of nations. Now it follows from Hague Convention VII of 1907 that the only vessels upon which the law of nations confers the character of warships are, aside from warships proper, merchant ships converted into warships in conformity with the provisions of the aforesaid convention. Consequently the assimilation of armed merchant ships to warships would be contrary to the law of nations. To assimilate vessels that do not fulfill the conditions of the aforesaid convention to warships would have the effect of giving these vessels the rights of warships, and this would be equivalent to reëstablishing privateering.

The Queen's Government must first of all observe that it has not in the official documents which it has published made a distinction between the *law of nations* and the law of neutrality, as the French Government assumes, but between the *law of war* and the law of neutrality, both of which form a part of the law of nations, but are governed by different principles by reason of the totally different character of the matter falling within the province of each of these branches of the law of nations.

The British Government, which, at the very beginning of the war, informed itself with regard to the treatment which the Queen's Government would apply to armed merchant ships, had contended in the month of June, 1915, just as the French Government now contends, that merchant ships armed solely for self-defense do not lose their character as merchant ships, since, according to the law of nations, a belligerent merchant ship is permitted to defend itself against an attack on the part of an enemy warship. In its opinion, armed merchant ships might, therefore, be admitted by neutral Powers to their waters on the same footing as other merchant ships.

The Queen's Government replied that it had no hesitation in admitting the right of merchant ships to arm themselves; but it added that

in its opinion it does not follow that armed merchant ships of belligerents should be admitted to the ports, roadsteads, and territorial waters of a neutral Power, inasmuch as this latter question belongs to the domain of the law of neutrality, while the question whether belligerent merchant ships have the right to defend themselves against enemy warships in order to escape capture or destruction belongs to the province of the law of war.

There is involved a question of a fundamental distinction in the established law of nations, which has effect not only in codified rules, but also in matters which have not yet been settled in detail by conventional stipulations.

Therefore the legality of the act of a belligerent merchant ship which defends itself against a warship of the enemy does not impose upon neutral states the duty of admitting to their dominions merchant ships armed for self-defense any more than the legality of the acts of war committed by belligerent warships imposes upon those states the obligation of admitting these warships to their dominions.

The Queen's Government fully shares the view of the Government of the Republic that it is not lawful for a state to confer the character of a warship upon a vessel which has not that character according to the provisions of the law of nations. Moreover, it is not conferring this character upon armed warships. It is confining itself to "assimilating" them to warships, in so far as their admission to its waters is concerned. The French Government can not fail to recognize the fact that it is only necessary to put the question whether a declaration of neutrality confers upon vessels therein designated as "vessels assimilated to warships" the character of warships according to the law of nations, to answer it in the negative. For any interpretation to the opposite effect would be fundamentally wrong, in that it would attribute to such a declaration a scope beyond the sphere of its natural application.

What the Netherland neutrality declaration enacts is a rule that certain classes of vessels, *which are not* warships according to the law of nations, but whose presence within the dominion over which the Netherlands has jurisdiction would be calculated to compromise the security and neutrality of that dominion, shall be subject to the same treatment as ships of war, namely, that their presence will not be tolerated. It confers upon them no other right than that of being admitted to this dominion in the cases in which warships also are admitted thereto.

If privateering were reëstablished, it would certainly not be by the act of the Powers that refuse to receive in their dominion vessels which, though they do not fulfill the conditions required of vessels of war, are nevertheless provided with an armament that enables them to commit acts of war.

No rule of the law of nations denies to neutral states the right to proclaim, with regard to belligerent vessels other than warships, such rules as are necessary to insure respect for the dominion over which they have jurisdiction, namely, that such vessels shall be subject to the same treatment as warships.

Hague Convention VII governs the legal status of auxiliary cruisers duly incorporated into the navies of belligerents. By virtue of the said convention, these vessels are not simply assimilated to warships, but by reason of their conversion they actually become warships and can not be treated as privateers. On the other hand, the convention does not deal with the legal status of vessels which can not claim to be warships, but which are none the less suitable for war operations.

The passage in Mr. Fromageot's report, stating that certain rules of neutrality, sometimes local, such as passage through certain straits, sometimes general, such as the limit of stay or of victualing in neutral ports, apply only to warships, could not therefore be construed in the sense that states which have remained outside of the war have no duties of neutrality with respect to vessels which do not fulfill the conditions required in order to acquire the right to be called warships. By placing this construction upon the passage in question, we would not be taking into account Article 5 of Convention XIII, which prohibits belligerents from using neutral ports and waters as bases of naval operations against their enemies.

It follows from the foregoing that Convention VII in no way affects the rights and duties of neutral Powers with regard to belligerent vessels, which, though they can not be considered warships, are adapted for military purposes. Such vessels are subject to Convention XIII and the general principles of neutrality.

The Queen's Government is perfectly aware of the perilous situation in which French merchant ships find themselves when they are not convoyed by warships and — like neutral vessels — have no defense against the attacks of German submarines. It understands that because of this danger certain of them will not continue to visit regularly the Netherland ports which they have been accustomed to frequent.

It would regret exceedingly this consequence, so injurious to the interests of both countries, of its rule of neutrality.

But the considerations which determined it in the month of August, 1914, to include belligerent armed merchant ships in the category of vessels assimilated to warships in the terms of its neutrality declaration still have their full force.

Besides, a change in its attitude at the present time would be especially serious, because it would involve the revocation of a rule of neutrality laid down at the very beginning of the war and duly notified to both belligerent parties.

Nothing could be more contrary to the very principle of neutrality than to repeal in the course of a war and at the request of one of the belligerents a rule of neutrality which, as the result of events, whatever they may be, is found to be to the disadvantage of that belligerent alone. Such a revocation would indisputably take on the character of a favor and would therefore be incompatible with impartiality which is the distinctive feature of neutrality.

The Queen's Government flatters itself that the Government of the Republic, after taking note of the foregoing, will be convinced that the attitude of the Netherlands on this point is not inspired by any unfriendly intention toward France or her allies.

The Hague, April 26, 1917.

Note from the American Legation to the Netherland Ministry for Foreign Affairs

The Hague, March 13, 1917.

EXCELLENCY:

I have the honor to inform your Excellency that inasmuch as American vessels which are departing from the United States for the prohibited zones are being armed for self-protection, I have been instructed by my government to ascertain from your Excellency whether vessels of this nature will be permitted by the Royal Netherlands Government to enter the ports of Holland and depart therefrom without hindrance.

I shall be glad therefore if your Excellency will kindly inform me, if possible, of the action which Her Majesty's Government intends to take in connection with this matter.

I avail, etc.

(Signed) MARSHALL LANGHORNE.

*Note from the American Legation to the Netherland Ministry for
Foreign Affairs*

The Hague, March 17, 1917.

EXCELLENCY:

I have the honor to refer to my communication addressed to your Excellency on the 14th instant, regarding the treatment of armed neutral vessels which may enter the ports of the Netherlands and, at the request of my government, to ask that your Excellency will kindly inform me if, in connection with the treatment accorded to the vessels in question in Dutch ports, it is the intention of Her Majesty's Government to draw any distinction between vessels which are armed privately by the respective owners and American merchant ships which carry an armed guard placed on board for protection by the Government of the United States.

I avail, etc.

(Signed) MARSHALL LANGHORNE.

*Note from the Netherland Minister for Foreign Affairs to the American
Chargé d'Affaires*

The Hague, March 22, 1917.

MR. CHARGÉ D'AFFAIRES:

In reply to your favors of the 14th and 17th instant, I have the honor to inform you that by virtue of the Royal decree of July 30, 1914 (*Journal Officiel* No. 332), the presence of warships or vessels assimilated thereto of foreign Powers in Netherland territorial waters and interior waters is not permitted.

Armed merchant ships come within the category of vessels assimilated to warships, without distinction as to whether the owner of the vessel provided it with an armament on his own authority, or whether the foreign government has placed a gun crew on board the vessel for its protection.

The Royal decree does not apply to the colonies of the Netherlands.
Kindly accept, etc.

(Signed) J. LOUDON.

*Note from the American Legation to the Netherland Ministry for
Foreign Affairs*

The Hague, April 2, 1917.

EXCELLENCY:

With reference to your Excellency's note of March 22, 1917, No. 11459, regarding the regulations applicable to armed merchantmen in the territorial waters of the Netherlands, I have the honor to ask at the instance of my government, that you will be so good as to inform me if the above-mentioned regulations apply to armed merchant vessels of neutral countries as well as to those of belligerent countries.

I venture to add that the Government of the United States assumes that the position of Her Majesty's Government does not refer to armed merchant ships of neutral countries which may enter Dutch ports as merchant vessels, and accordingly will be glad to receive a confirmation of this view from the Government of the Netherlands.

I avail, etc.

(Signed) MARSHALL LANGHORNE.

*Note from the Netherland Minister for Foreign Affairs to the American
Chargé d'Affaires*

The Hague, April 14, 1917.

MR. CHARGÉ D'AFFAIRES:

In reply to your note of the 2d instant, I have the honor to inform you that the Royal decree of July 30, 1914, cited in my letter of March 22d last, No. 11459, prohibits, as a general rule, the presence of warships or vessels assimilated thereto of any foreign Power in the territorial waters or interior waters of the Netherlands. This Royal decree does not apply to the colonies.

The neutrality declaration substituted therefor special provisions, in so far as belligerent warships or vessels assimilated thereto are concerned. According to the terms of the said declaration, the presence of any warship or vessel assimilated thereto of a belligerent Power shall not be tolerated in the jurisdiction of the state, including the colonies and overseas possessions, except in the cases provided for in Article 5. The sanction of this provision is formulated in Article 3,

which prescribes internment in case of infraction of the rules contained in Articles 2, 4, and 7.

Armed merchant ships, in so far as the application of these prescriptions is concerned, are included in the category of vessels assimilated to warships.

It follows from the foregoing that the presence of armed merchant ships of a belligerent Power is prohibited throughout the entire jurisdiction of the state, while such vessels of neutral Powers are barred from such jurisdiction only in so far as the dominion of the kingdom in Europe is concerned.

Kindly accept, etc.

(Signed) J. LOUPON.

GENERAL AGREEMENT BETWEEN THE UNITED STATES AND NORWAY RELATING TO EXPORTS¹

April 30, 1918

The War Trade Board, an administrative agency empowered by executive order of the President to license exports from the United States, and the special representative of the Norwegian Government, have jointly considered the commercial relations between the United States and Norway, during the continuance of the present war, for which period this agreement shall continue, subject to termination by either party at the expiration of one year from date and at any time thereafter by either party upon giving three months notice of intention to terminate the same.

With the knowledge of their respective governments, the War Trade Board and the special representative of the Norwegian Government have agreed as follows:

ARTICLE I

1. The powers of the War Trade Board are administrative and pertain wholly to the Nation's domestic or internal affairs.

2. The said War Trade Board agrees that Norway shall receive at ports of origin her estimated needs of the articles enumerated in the several schedules annexed in so far as the same, first, are not required for consumption in the United States, and in so far as the exportation thereof will not so reduce available supplies as to prevent the rationing of the nations associated with the United States in the war; and, second, will not, directly or indirectly, be exported to any country or ally of any country with which the United States is at war.

3. In consideration of the stipulations hereinafter set forth, said War Trade Board agrees to license the export (and in so far as the United States is concerned, free of license charges or export tax), or facilitate the obtaining, as the case may be, of the estimated requirements of Norway enumerated in the Schedules A, B, C, D, E, and F, hereto annexed and made a part hereof. Norway's genuine require-

¹ Official Bulletin, May 27, 1918.

ments for home consumption of articles not mentioned in these schedules shall be met as far as possible.

4. If sufficient quantities to supply the estimated needs are not deemed available for exportation from the United States at the time required, export licenses shall be granted for as great a part thereof as is available, compatible with the rules and regulations set forth in this agreement; and said Board will grant licenses for bunker fuel and ship's stores to vessels transporting the said commodities to Norway from the United States or other countries.

The War Trade Board has been assured by the governments of the Powers associated in the war with the United States and with which it is acting in full accord in these matters that vessels carrying supplies to Norway in compliance with the present agreement shall not in any way be hindered, held, or seized on the part of the Allies, subject however, to the exercise by the Allies of the right of visit and search. The Governments of the said Powers associated with the United States will in every way facilitate the transportation to Norway of all such supplies.

The Norwegian vessels specially reserved for and when actually engaged in carrying supplies to Norway under the present agreement shall not be subject to bunker regulations or other restrictions and shall receive by license bunker fuel and ship's stores necessary to carry such supplies to Norway.

ARTICLE II

In consideration of the granting of such export and bunker and ship's stores licenses for the exportation from the United States and other countries to Norway of the articles enumerated in the annexed schedules the Norwegian Government agrees to the following stipulations:

1. The commodities enumerated in the Schedules *A*, *B*, *C*, *D*, *E*, and *F*, annexed, for which licenses may be granted, are based upon the total estimated import needs of Norway for each 12 months' period during the continuance hereof, and, since these commodities are to be withdrawn from already restricted world supplies, it is expressly understood that all supplies Norway is enabled to import shall as, and when imported, be deducted from the commodities set forth in said schedules.

Owing to the fact that supplies in the United States are restricted, and as an inducement for Norway to obtain elsewhere a part of her

requirements and thus save in the use of tonnage, it is understood that in reckoning imports pursuant to the provisions hereof each ton of the commodities enumerated in the schedules annexed, obtained from Russia as constituted before the war, shall be counted as the equivalent of one-half ton obtained elsewhere.

The importation into Norway of the articles described in the said annexed schedules is for consumption in Norway and the quantities thereof which shall be licensed (notwithstanding the aggregate quantities set forth in the schedules annexed) shall at all times be determined by the actual internal requirements of Norway, with due regard to existing stocks and to the importation into Norway from countries where the license of the Board is not required of like articles, or articles capable of use as substitutes for those described in the annexed schedules.

No article imported into Norway under the provisions hereof shall be exported by Norway to other than "Allied" destination, nor shall any article released by such importation be exported to other than "Allied" destination.

2. Within sixty days from the execution of these presents, full statistics shall be obtained by the Norwegian Government and furnished to the accredited representative of the War Trade Board, and to accredited representatives of the governments associated with the United States in the war, showing in detail the amounts of existing stocks in Norway of all articles enumerated in the annexed Schedules A, B, C, D, E, and F, and also showing the locations and ownership of such stocks. And while this agreement continues in effect complete statistical information shall be furnished monthly from the date hereof, to the accredited representative of the War Trade Board, in regard to all exports from and imports into Norway. The statistics which shall be furnished shall be forthcoming not later than thirty days after the period to which they shall have reference, and shall state in detail the name, description, and quantity, the country of exportation and country of destination of each commodity imported and exported, and shall include statistics in regard to trade with both neutrals and belligerents. If any question shall arise in respect to the observance of any restrictions of, or prohibitions against, exports, full particulars shall, upon request, be furnished to the War Trade Board or its accredited representative in regard thereto, and the Norwegian Government will use every effort within its power in regard to the effective enforcement of such prohibitions, regulations, and restrictions. To the end that such

questions may arise as little as possible, the Norwegian Government is willing that the War Trade Board should require from importers in Norway, in return for the granting of licenses, such undertakings as to the disposal of the goods imported as may be in accordance with the terms of this agreement. The Norwegian Government shall have an opportunity to discuss with the representative of the War Trade Board the form of such undertakings. The War Trade Board reserves the right to refuse to accept guaranties which they have reason to believe are not offered in good faith. Such cases are to be explained to and discussed with the Norwegian branch associations.

3. Imports of the articles enumerated in the annexed schedules shall be distributed as evenly as possible throughout the year with due regard to seasonal requirements.

Norway is entitled to have at all times stocks of articles set out in schedules corresponding to at least three months' actual needs.

The right is reserved to the War Trade Board to determine the distribution of the allotments for export from the United States both as to time and port, but due consideration shall be given to any representations of the Norwegian Government that may from time to time be made in regard thereto. And the Norwegian Government will from time to time freely consult with the United States and its associates as to the oversea sources from which the articles which are to be imported into Norway shall be obtained.

4. All food and feed stuffs included within the schedules of estimated requirements obtained from the United States shall be purchased through, or with the approval of, the Food Administration, and the vessels engaged in carrying such tonnage shall receive the same at any Atlantic or Gulf coast port that may be designated by said Food Administration. The Norwegian Government will utilize the services of the Interallied Wheat Executive as their sole agent for the purchase of grain and flour everywhere except in the United States and European countries, and vessels engaged in carrying such grain and flour shall receive the same at any port outside the United States that may be designated by said executive.

The War Trade Board assures the Norwegian Government that the said Food Administration and the Interallied Wheat Executive will use every effort within their power to assist Norway in securing such commodities.

5. No articles, including those mentioned in Article III of this agreement, which are obtained, grown, or produced, in whole or in part,

by the use of any implements, machines, machinery, coal, gasoline, kerosene, oils, lubricants, or other auxiliaries or articles hereafter imported from the United States, or hereafter imported from any country associated with the United States in the war, or whose importation shall be facilitated by the War Trade Board's license for bunker coal and ship's stores, or by the license or authority of any country associated with the United States in the war, shall be directly or indirectly exported from Norway to any country or ally of any country with which the United States is at war (including territory occupied by the military forces of such country). The foregoing shall be taken also to include any country, whether previously Allied or neutral, all or a portion of whose territory is now occupied by Germany or her allies, excepting France, Italy, and Belgium.

6. No articles, including those mentioned in Article III of this agreement, which are obtained, grown, or produced, in whole or in part, by the use of any implements, machines, machinery, coal, gasoline, kerosene, oils, lubricants, or other auxiliaries or articles hereafter imported from the United States or hereafter imported from any country associated with the United States in the war, or whose importation shall be facilitated by the War Trade Board's license for bunker coal and ship's stores, or by the license or authority of any country associated with the United States in the war, shall be directly or indirectly exported from Norway to any neutral country until after Norway shall have procured an agreement from such neutral country, with proper security for the enforcement thereof, that such commodities so exported shall not be directly or indirectly reexported to Germany or her allies, nor shall any commodities which such articles so exported may serve to release be exported to Germany or her allies. The security mentioned above will be satisfactory to the United States as follows:

For Switzerland, anything going through the S. S. S.

For Holland, anything exported through the N. O. T.

For Denmark, anything exported through the Danish associations.

For Sweden, anything exported by means of *Handels Kommission* certificate.

Each of the foregoing associations will be satisfactory to the United States in the case of all articles which are included in the agreement between the respective importing association and the governments of the associates of the United States, but in respect of articles not so

covered Norway will not allow their export to any neutral country which does not effectively prohibit the export of such or similar articles or articles made from or by means of or released by them in any form whatsoever, without prior consultation with and the written assent of the representative of the War Trade Board.

In case the Swedish agreement with the United States and/or its associates in the war, if and when made, shall designate some other *kommission* or association, such designation shall be substituted for the *Handels Kommission* in this agreement.

ARTICLE III

In consideration of the fact that Norway's requirements of necessities will be secured by the United States and the Powers associated with her in the war, and in order to give the United States and said Powers opportunity to buy considerable quantities of Norway's exportable surplus, the Norwegian Government agrees to the following restrictions of her exports to the Central Powers or their allies:

1. Norway will not export to the Central Powers or their allies foodstuffs of any kind except fish and fish products. Fish and fish products may be exported in quantities not to exceed 48,000 tons per annum, export weight.

The term "fish" shall be taken to include all categories of fish, both salt water and fresh water, including shellfish and marine animals, and the term "fish products" shall be taken to include the products of all fish as herein defined, whether fresh, salted, dried, smoked, canned, or preserved in any way whatsoever, but there shall be no export to Germany or her allies of any oil or derivations thereof, of fish or of any marine animals. The quantity of fish and fish products which may be exported to Germany and her allies shall not exceed 15,000 tons in any three months and the amount which such export is more or less than 12,000 tons in any quarter must be deducted from or added to 12,000 tons the following quarter.

The export of each class of fish and fish products is to be made in the form in ordinary commercial use in the past, but the Norwegian Government agrees that the export of "Kilpfisk" (*i.e.*, dried salted fish) and "Torfisk" (*i.e.*, dried fish) shall not exceed 8,000 tons a year in all, and canned fish goods shall not exceed 15,000 tons a year.

While this agreement is in force no fish caught by Norwegian boats shall, without the written consent of the Norwegian Government,

be landed elsewhere than in Norway, nor shall any such fish be transferred at sea except in collecting vessels, which shall be obliged to land their cargoes in Norway only.

2. The export per annum of the following articles from Norway to the Central Powers and their allies shall not exceed:

(a) Calcium carbide, 10,000 tons.

(b) Calcium nitrate, 8,000 tons.

(c) Ferro-silicon, 2,000 tons.

(d) Iron ore, 40,000 tons, no part of which shall be in the form of pyrites, nor any ores containing manganese. Besides this quantity to be exported of iron ore, there may also, as compensation, be exported a quantity of same containing iron equal to the amount of iron contained in the iron and steel goods exported to Norway from the Central Powers or their allies, plus 5 per cent for wastage. In no event, however, shall the aggregate quantity of iron ore exported by Norway under this clause exceed for any 12 months the amount exported in 1917, as per schedule attached.

(e) Zinc, 1,000 tons. Besides this quantity to be exported of zinc there may also, as compensation, be exported a quantity of same containing an equal amount of zinc to that contained in goods exported to Norway from the Central Powers or their allies, plus 5 per cent for wastage. In no event, however, shall the aggregate quantity of zinc exported by Norway under this clause exceed the amount exported in 1917 as per schedule attached.

(f) Aluminum, 40 tons.

The export of the foregoing articles, except by way of compensation, shall be distributed as evenly as possible over the year and the export of no article shall exceed half the annual quantity during the first six months.

3. Copper in the form of crude or refined copper or pyrites cinders on condition and to the extent that Norway shall receive within 60 days from the date of such export copper goods, or goods containing copper, the copper content of which shall be equal to the copper so exported less 5 per cent for wastage. In no event shall the aggregate quantity of copper (in whatever form it may be) exported by Norway under this clause exceed 200 tons. Nothing herein contained shall be construed to authorize or permit the exportation to Germany or her allies of pyrites in any form, except pyrites cinders, provided the total quantity of copper so exported shall not exceed 200 tons.

4. The Norwegian Government agrees that during the continuance of this agreement the following articles shall not be exported from Norway to the Central Powers or their allies:

Domestic animals or their products.

Bismuth.

Nickel.

Wolfram.

Chrome ore.

Pyrites.

Molybdenum.

Nitrates, except the 8,000 tons calcium nitrate mentioned in Article III, 2 (b).

Mica.

Tin.

Antimony.

Manganese.

Titanium.

5. The Norwegian Government agrees that the yearly export to the Central Powers and their allies during the continuance of this agreement of articles not mentioned in Article III, paragraphs 1-4, shall not exceed the quantities exported to the said countries from Norway in 1917, as given in the annexed schedule, marked *H*, nor include any other articles.

If Norway should desire to export to the Central Powers further articles not mentioned or additional quantities of those limited this will be sympathetically considered if the necessity should be shown therefor, but no such exports shall be made without prior written agreement with the War Trade Board.

6. In order to counteract the consequences of Norway having now for a long period of time had her supplies blocked, the moving of supplies to Norway, the stocks of which shall have been depleted, shall be undertaken with the greatest possible intensity, as soon as the present agreement comes into force.

7. Owing to the fact that the interest of a number of persons and firms who have hitherto carried on exports to the Central Powers will through the provisions of the present agreement be seriously interfered with, it is understood that in case such persons and firms guarantee to discontinue all exports to the Central Powers and their allies, except

exports permitted by the provisions of this agreement and referred to hereinafter in this section, they shall not be discriminated against after the conclusion of this agreement, provided such export was not carried on in violation of any existing undertaking or of any Norwegian law.

It is understood and agreed that the persons, firms, and corporations who may export to the Central Powers the commodities in the quantities hereinbefore provided for, or in section 2 of Article III provided for, shall not, because of such export, be deemed enemies or be discriminated against by the United States or the nations associated with the United States in the war.

ARTICLE IV

By way of compensation for the allotment of Norway's requirements, enumerated in the annexed Schedules *A, B, C, D, E, and F*, the Norwegian Government will authorize and permit the export, free of export taxes, of the following commodities to the United States or to any of the countries associated with the United States in the war:

(a) Chemical products. — Nitrates, cyanamide, calcium carbide, silicium carbide, and similar products.

(b) Metallurgical products. — Aluminum, zinc, sodium, ferro-silicon, ferro-chrome, special steel hobnails and nails.

(c) Minerals. — Iron ore concentrates and briquets, pyrites, molybdenite and other ores of the same class.

(d) Wood and manufactures of wood. — Round timber, mainly pitprops, sawn planed wood, pulp (dry), chemical pulp (cellulose), paper, and matches.

(e) Fish and fish products.

And in granting export licenses for said commodities, which Norway hereby agrees to do, free of all taxes or charges, the Norwegian Government will give the United States and her associates preference over all other countries, except as hereinafter in this article provided, for such quantities of said commodities in excess of Norway's genuine requirements for home consumption and as are hereinafter set forth.

It is understood that the preference just hereinbefore provided shall not apply with respect to the articles to be exported from Norway to the Central Powers in accordance with the provisions of section 2 of Article III hereof.

The quantities which it is estimated will thus be available for export to the United States and the countries associated with the United States in the war are substantially as follows (quantities are estimated in metric tons):

1. Chemical products. — Nitrates, 112,000 tons; cyanamide, 10,000 tons; calcium carbide, 30,000 tons; silicium carbide and similar products, 3,000 tons; total, 155,000 tons.

2. Metallurgical products. — Aluminum, 12,000 tons; zinc, 20,000 tons; sodium, 500 tons; ferro-silicon, 20,000 tons, ferro-chrome, 5,000 tons; special steel hobnails and nails, 3,000 tons; total, 60,500 tons.

3. Minerals. — Iron-ore concentrates and briquets, 200,000 tons; pyrites, 130,000 tons; molybdenite and other ores of the same class, 300 tons; total, 330,300 tons.

4. Wood and manufactures of wood. — Round timber, mainly pitprops, 150,000 tons; sawn planed wood, in all 400,000 tons; pulp (dry weight), 125,000 tons; chemical pulp (cellulose), 200,000 tons; paper, 125,000 tons; matches, 5,000 tons; total, 1,005,000 tons.

5. Fish and fish products, 48,000 tons.

Norway will permit the export to the United States and her associates in the war of any other commodities needed by them which she can spare.

6. Norway, while this agreement is in force, agrees that it will do nothing which will have the effect of interfering with exports of any of the commodities designated in this article to the United States or to any country associated with the United States in the war. Norway, while this agreement remains in force, agrees that it will do nothing which will have the effect of preventing an increase in the production of such articles and consequent increase in the export thereof to the United States and her associates where such increase can be effected without prejudice to the genuine Norwegian requirements for home consumption.

Nothing in this section contained shall, however, be construed to prohibit the enactment of laws for the protection or advantage of the laboring classes.

ARTICLE V

1. Nothing herein contained shall be construed as in any manner modifying or changing the terms or conditions of any arrangements or agreements between the Governments of Norway and France,

Italy, or Great Britain providing for the prohibition or restriction of exports from Norway, or the terms or conditions of any arrangement or agreement between the Governments of Norway and France, Italy, or Great Britain, or the terms or conditions of any guaranty given to or agreement made with those governments by Norwegian citizens, which either is now in force or which, having been in abeyance owing to the suspension of imports into Norway, may be revived when such imports recommence, under the terms of this agreement. If any agreement by the terms of which Norway is receiving from any country associated with the United States in the war, all or any part of any commodity needs provided for in the annexed schedules, shall, during the continuance of this agreement, be denounced or terminated at the instance of the Norwegian Government, then the quantity of any commodity which Norway would have been entitled to receive had she permitted the agreement so terminated to continue in force, shall be deducted from the quantities of such commodities set forth in the annexed schedules.

2. It is understood that the Norwegian Government shall have the right to control the import and distribution of all commodities imported into Norway, except as in this agreement provided; any commodity of a kind needed in a manufacturing plant whose import and distribution shall have been approved in this agreement by the Norwegian Government and which commodity shall be employed in producing manufactured articles for the United States or any country associated with the United States in the war, shall not, during the continuance of this agreement, be requisitioned, commandeered, or otherwise diverted or distributed by the Norwegian Government to the detriment of the operation of such plant, nothing in this section however to apply to food.

3. The Norwegian Government hereby declares that it is ready to, and does hereby, authorize trade associations in Norway to negotiate with the Governments of the United States, Great Britain, France, and Italy for the conclusion, revival, renewal, extension, or modification of all agreements with said governments, all such agreements when finally negotiated to be subject to the approval of the Norwegian Government. And the Norwegian Government hereby declares its readiness to permit the enforcement of any control, restriction, or prohibition in regard to imports and exports, and the distribution thereof, provided for in any such agreements, as far as consistent with existing Norwegian law.

It is understood and agreed that this agreement shall commence to operate May 10, 1918.

In witness whereof the War Trade Board has caused these presents to be executed by Vance C. McCormick, its chairman, and Dr. Fridtjof Nansen, special representative of the Norwegian Government, has executed the same on behalf of Norway, this 30th day of April, 1918.

WAR TRADE BOARD

By VANCE C. MCCORMICK,

Chairman.

FRIDTJOF NANSEN,

Special Representative of the Norwegian Government.

Norway

Annual quantities of supplies for Norway under a general agreement with the United States

(Quantities in tons where not otherwise designated)

Kind of goods	Quantities, metric tons	Kind of goods	Quantities, metric tons
<i>Schedule A — Foodstuffs</i>		Fruit, dried	4,000
Bread grains, including rice	¹ 300,000	Fruit, fresh	6,000
Oil cakes and Indian corn	² 200,000	Sugar	50,000
Starches	1,000	Pork and beef	10,000
Cocoa	1,400	<i>Schedule B — Oils and fats, etc.</i>	
Coffee	14,500	Vegetable and animal oils .	10,000
Tea	160	Oil seeds (for seed-crushing plants)	³ 20,000
Sauces and pickles	80	Mineral oils	76,500
Sirup	10,000		
Spices	382		

¹ Barley used in substitution for rye or wheat as a bread grain will count in proportion of 1.4 to 1, which does not apply in the case of barley used in the manufacture of beer.

² The figure for fodder stuffs of 200,000 tons is in terms of corn values, and includes all concentrates, oil cake being figured at 4 to 1, and includes the fraction of oil seeds in terms of oil cake later included in classification.

³ Two items 10,000 tons vegetable and animal oil and 20,000 tons oil seed in terms of oil. This figure to be estimated in connection with Norwegian stock of fish oil suitable for fabrication into margarine with the addition of a certain amount of cottonseed oil. Any fats or oils to be used in Norway for fabrication of foodstuffs under contract to the Allies, including canning of fish, are to be especially provided for said purposes under special arrangement in each case.

Paraffin wax, stearine, stearine acid, and palm acid.....	750	hardware and tools, chemicals, dyes, colors, drugs, medicines, agricultural implements and agricultural machinery, and other articles to assist Norway in increasing her own production of foodstuffs.....	(⁶)
Vegetable and mineral turpentine and white spirit	350	<i>Schedule E — Miscellaneous</i>	
Varnishes.....	370	Corkwood	900
Shellac.....	68	Borax and boric acid	80
Rape oil.....	120	Asbestos.....	350
Ceresin, carnauba wax....	40	Rock phosphate.....	40,000
Oils, not specified.....	1,500	Antimony	12
<i>Schedule C — Rubber, etc.</i>		Electrode carbon and carbon electrodes.....	5,000
Rubber, etc.....	500	Hides	3,500
Rubber covers for automobiles and trucks.....	(⁴)	Tanning extracts.....	5,000
Rubber tubes for same (including new importations on cars).....	8,300	Resin	4,000
Solid rubber tires for trucks (including new importations on cars).....	1,100	Tobacco	2,000
Rubber tires for motorcycles (including new importations on cars).....	2,100	Shoes, boots, and rubbers (mostly rubbers).....	200
Rubber tires for same (including new importations on cars).....	2,100	<i>Schedule F — Metals, minerals, etc.</i>	
<i>Schedule D — Textiles</i>		Tin, raw	(⁷) 80
Silk yarns and tissues....	110	Tin plates.....	(⁸)
Cotton, raw, yarn and manufactures.....	8,000	Lead	1,000
Wool, wool yarn, and products.....	3,700	Iron and steel (pig-iron ingots, bars, hoops, angles, plates, pipes, fittings, wire, etc.).....	250,000
Flax, hemp, jute, and tow	6,500	Copper (plates, bars, pipes, wire, cable)	7,000
Metal-working machinery of all kinds.....	(⁵)	<i>Schedule H (⁹)</i>	
Fixtures, motor cars, motor trucks, bicycles, writing machines, cash registers, accounting machines,		Down.....	0.003
		Skin of otter.....	0.001
		Skin of fox.....	* 0.685

⁴ 17,000 pieces (including new importations on cars).

⁵ Subject to special agreements.

⁶ As required by Norway.

⁷ Increase subject to future agreement.

⁸ Subject to future agreement.

⁹ Figures to the right of the decimal point are kilograms.

Kind of goods	Quantities, metric tons	Kind of goods	Quantities, metric tons
Skin of polar bear.....	0.760	Silver waste.....	1.998
Skin of seal.....	213.190	Pumps.....	0.160
Skin of shark.....	0.550	Tools, etc.....	11.600
Skin of wild animals not specified.....	3.430	Other manufactures of iron.....	0.165
Whalebones.....	16.668	Manufactures of silver ...	0.003
Furniture.....	0.050	Manufactures of gold ...	0.001
Lichens.....	7.009	Other machinery.....	136.324
Writing paper.....	0.080	Various tools and appa- tus.....	24
Various manufactures of paper.....	0.018	Medicines, norgin and tangan.....	11.800
Waste of paper.....	314.395	Books.....	0.222
Rutil.....	2.133	Rat poison.....	1.778
Granite.....	2,531.020	Ice.....	8.100
Felspar.....	1,260.000	Waste of soapstone.....	99.000
Soapstone.....	231.780	Seaweed.....	7.760
Stone chiseled.....	97.267	Moosehorn.....	425.000
Whetstones.....	98.670	Lead ash.....	2.000
Felspar dust.....	125.500	Screws.....	21.683
Talcum.....	17.120	Old electric motors.....	0.732
Seaweed ashes.....	478.300	Iron ore.....	6.542
Phosphorus, raw.....	4.296	Zinc.....	133,614.000
Blystam.....	1.965		4,467.000

PROCLAMATION CONCERNING THE POSSESSION AND UTILIZATION
OF NETHERLANDS VESSELS

No. 1436. March 20, 1918

WHEREAS, the law and practice of nations accords to a belligerent Power the right in time of military exigency and for purposes essential to the prosecution of war, to take over and utilize neutral vessels lying within its jurisdiction:

And WHEREAS the Act of Congress of June 15, 1917, entitled, "An Act making appropriations to supply urgent deficiencies in appropriations for the military and naval establishments on account of war expenses for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," confers upon the President power to take over the possession of any vessel within the jurisdiction of the United States for use or operation by the United States:

Now therefore I, Woodrow Wilson, President of the United States of America, in accordance with international law and practice, and by virtue of the Act of Congress aforesaid, and as Commander-in-Chief of the Army and Navy of the United States, do hereby find and proclaim that the imperative military needs of the United States require the immediate utilization of vessels of Netherlands registry, now lying within the territorial waters of the United States; and I do therefore authorize and empower the Secretary of the Navy to take over on behalf of the United States the possession of and to employ all such vessels of Netherlands registry as may be necessary for essential purposes connected with the prosecution of the war against the Imperial German Government. The vessels shall be manned, equipped, and operated by the Navy Department and the United States Shipping Board, as may be deemed expedient; and the United States Shipping Board shall make to the owners thereof full compensation, in accordance with the principles of international law.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the District of Columbia, this twentieth day of March,
in the year of our Lord one thousand nine hundred and
[SEAL.] eighteen, and of the Independence of the United States
of America the one hundred and forty-second.

WOODROW WILSON.

By the President:

ROBERT LANSING,
Secretary of State.

EXECUTIVE ORDER TAKING POSSESSION OF EQUIPMENT ON BOARD
NETHERLANDS VESSELS

No. 2825-A. March 28, 1918

In pursuance of the authority conferred upon the President of the United States by the Act approved June 15, 1917, entitled, "An Act making appropriations to supply urgent deficiencies for the fiscal year ending June 30, 1917, and for other purposes," the Secretary of the Navy is hereby authorized and directed to take over, on behalf of the United States, possession of all tackle, apparel, furniture and equipment and all stores, including bunker fuel, aboard each of the vessels of Netherlands registry now lying within the territorial jurisdiction

of the United States, possession of which was taken in accordance with the proclamation of the President of the United States promulgated March 20, 1918; and in every instance in which such possession has heretofore been taken of such tackle, apparel, furniture, equipment, and stores, such taking is hereby adopted and made of the same force and effect as if it had been made subsequent to the signing of this executive order.

The United States Shipping Board shall make to the owners of any tackle, apparel, furniture, equipment, and stores taken under the authority of this order full compensation in accordance with the principles of international law.

WOODROW WILSON.

THE WHITE HOUSE,
March 28, 1918.

PROCLAMATION INCLUDING CERTAIN CITIZENS OR SUBJECTS OF GERMANY
OR AUSTRIA-HUNGARY AS "ENEMIES" FOR PURPOSES OF TRADING
WITH THE ENEMY ACT.

No. 1454. May 31, 1918

WHEREAS paragraph (c) of section two of the Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the Trading with the Enemy Act, provides that the word "enemy" as used therein shall be deemed to mean, for the purpose of such trading and of said Act, in addition to the individuals, partnerships, or other bodies of individuals or corporations specified in paragraph (a), and in addition to the government and political or municipal subdivisions, officers, officials, agents, or agencies thereof specified in paragraph (b), of said section two, the following:

Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy";

Now, therefore, I, WOODROW WILSON, President of the United States of America, pursuant to the authority vested in me, and in accordance with the provisions of the said Act of October 6, 1917, known as the Trading with the Enemy Act, do hereby find that the

safety of the United States and the successful prosecution of the present war require that,

(1) Any woman, wherever resident outside of the United States, who is a citizen or subject of any nation with which the United States is at war and whose husband is either (a) an officer, official, or agent of the government of any nation with which the United States is at war, or (b) resident within the territory (including that occupied by the military or naval forces) of any nation with which the United States is at war, or (c) resident outside of the United States and doing business within such territory; and

(2) All citizens or subjects of any nation with which the United States is at war (other than citizens of the United States) who have been or shall hereafter be detained as prisoners of war, or who have been or shall hereafter be interned by any nation which is at war with any nation with which the United States is also at war; and

(3) Such other individuals or body or class of individuals as may be citizens or subjects of any nation with which the United States is at war (other than citizens of the United States) wherever resident outside of the United States, or wherever doing business outside of the United States, who since the beginning of the war have disseminated, or shall hereafter disseminate propaganda calculated to aid the cause of any such nation in such war, or to injure the cause of the United States in such war, or who since the beginning of the war have assisted or shall hereafter assist in plotting or intrigue against the United States, or against any nation which is at war with any nation which is at war also with the United States; and

(4) Such other individuals or body or class of individuals as may be citizens or subjects of any nation with which the United States is at war wherever resident outside of the United States, or wherever doing business outside of the United States, who are or may hereafter be included in a publication issued by the War Trade Board of the United States of America, entitled "Enemy Trading List"; and the term "body or class of individuals" as herein used shall include firms and copartnerships contained in said enemy trading list of which one or more of the members or partners shall be citizens or subjects of any nation with which the United States is at war; and

(5) Any citizen or subject of any nation with which the United States is at war wherever resident outside of the United States, who has been at any time since August 4, 1914, resident within the territory

(including that occupied by the military or naval forces) of any nation with which the United States is at war, shall all be included within the meaning of the word "enemy" for the purposes of the "Trading with the Enemy Act" and of such trading; and I do hereby proclaim to all whom it may concern that every such individual or body or class, of individuals herein referred to shall be and hereby is included within the meaning of the word "enemy" and shall be deemed to constitute an "enemy" for said purposes.

And by virtue of further authority vested in me by said Act entitled "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, and known as the Trading with the Enemy Act, I hereby make the following order, rule and regulation.

I hereby require that, pursuant to the provisions of subsection (a) of section seven of said "Trading with the Enemy Act," every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall transmit to the Alien Property Custodian a full list of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee may have reasonable cause to believe to be, included by the above proclamation within the term "enemy," together with a statement of the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest; and any person in the United States who holds or has or shall hold or have custody or control of money or other property, beneficial or otherwise, alone or jointly with others, of, for, by, on account of or on behalf of, or for the benefit of, and any person within the United States, who is or shall be indebted in any way to, any person included by the above proclamation within the term "enemy," or any person whom he may have reasonable cause to believe to be so included, shall report the fact to the Alien Property Custodian.

Such lists, statements, and reports shall be made and transmitted to the Alien Property Custodian, in such form and under such rules and regulations as he may prescribe within thirty days after the date of this order, or within thirty days after money or other property owing or belonging to or held for, by, on account of or on behalf of, or for the benefit of any such "enemy" shall come within the custody or control of the reporter, or within thirty days after any person shall

become an "enemy" by virtue of the terms of the above proclamation.

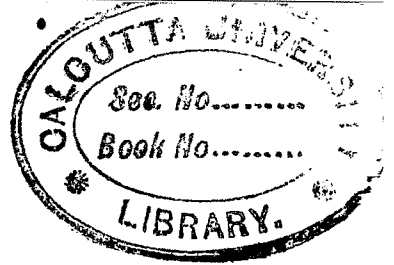
In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the District of Columbia this 31st day of May, in
the year of our Lord one thousand nine hundred and
[SEAL.] eighteen, and of the independence of the United States
the one hundred and forty-second.

WOODROW WILSON.

By the President:

ROBERT LANSING,
Secretary of State.

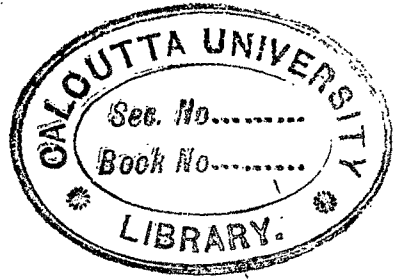


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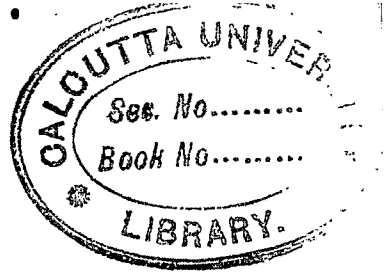
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OFFICIAL DOCUMENTS

CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN RELATING
TO THE SERVICE OF CITIZENS OF THE UNITED STATES IN GREAT
BRITAIN AND OF BRITISH SUBJECTS IN THE UNITED STATES.¹

*Signed at Washington, June 3, 1918; ratifications exchanged July
30, 1918.*

The President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being convinced that for the better prosecution of the present war it is desirable that citizens of the United States in Great Britain and British Subjects in the United States shall either return to their own country to perform military service in its army or shall serve in the army of the country in which they remain, have resolved to enter into a Convention to that end and have accordingly appointed as their Plenipotentiaries:

The President of the United States of America, Robert Lansing, Secretary of State of the United States; and

His Britannic Majesty, the Earl of Reading, Lord Chief Justice of England, High Commissioner and Ambassador Extraordinary and Plenipotentiary on Special Mission to the United States,

who, after having communicated to each other their respective full powers found to be in proper form, have agreed upon and concluded the following articles:—

Article I.

All male citizens of the United States in Great Britain and all male British Subjects in the United States shall, unless before the time limited by this Convention they enlist or enroll in the forces of their own country or return to the United States or Great Britain respectively for the purpose of military service, be subject to military service and entitled to exemption or discharge therefrom under the laws and regulations from time to time in force of the country in which they are: *Provided* that in respect to British Subjects in the United States the ages for military service shall be for the time being twenty to forty-four years, both inclusive;

Provided however that no citizen of the United States in Great Britain and no British Subject in the United States who, before pro-

¹ U. S. Treaty Series, No. 633.

ceeding to Great Britain or the United States; respectively, was ordinarily resident in a place in the possessions of the United States or in His Majesty's Dominions respectively, where the law does not impose compulsory military service shall, by virtue of this Convention, be liable to military service under the laws and regulations of Great Britain or the United States, respectively;

Provided further that in the event of compulsory military service being applied to any part of His Majesty's Dominions in which military service at present is not compulsory, British Subjects who, before proceeding to the United States were ordinarily resident in such part of His Majesty's Dominions, shall thereupon be included within the terms of this Convention.

Article II.

Citizens of the United States and British Subjects within the age limits aforesaid who desire to enter the military service of their own country must, after making such application therefor as may be prescribed by the laws or regulations of the country in which they are, enlist or enroll or must leave Great Britain or the United States as the case may be for the purpose of military service in their own country before the expiration of sixty days after the date of the exchange of ratifications of this Convention, if liable to military service in the country in which they are at the said date; or if not so liable, then before the expiration of thirty days after the time when liability shall accrue; or as to those holding certificates of exemption under Article III of this Convention, before the expiration of thirty days after the date on which any such certificate becomes inoperative unless sooner renewed; or as to those who apply for certificates of exemption under Article III and whose applications are refused, then before the expiration of thirty days after the date of such refusal, unless the application be sooner granted.

Article III.

The Government of the United States and His Britannic Majesty's Government may through their respective Diplomatic Representatives issue certificates of exemption from military service to citizens of the United States in Great Britain and British Subjects in the United States respectively, upon application or otherwise, within sixty days from the date of the exchange of ratifications of this Convention, or within thirty days from the date when such citizens or subjects become liable to military service in accordance with Article I, provided that the applications be made or the certificates be granted prior to their entry into the military service of either country.

Such certificates may be special or general, temporary or condi-

tional, and may be modified, renewed, or revoked in the discretion of the Government granting them. Persons holding such certificates shall, so long as the certificates are in force, not be liable to military service in the country in which they are.

Article IV.

This Convention shall not apply to British Subjects in the United States (a) who were born or naturalized in Canada, and who, before proceeding to the United States, were ordinarily resident in Great Britain or Canada or in any other part of His Majesty's Dominions to which compulsory military service has been or may be hereafter by law applied, or outside the British Dominions; or (b) who were not born or naturalized in Canada, but who, before proceeding to the United States, were ordinarily resident in Canada.

Article V.

The Government of the United States and His Britannic Majesty's Government will, respectively, so far as possible, facilitate the return of British Subjects and citizens of the United States who may desire to return to their own country for military service, but shall not be responsible for providing transport or the cost of transport for such persons.

Article VI.

No citizen or subject of either country who, under the provisions of this Convention, enters the military service of the other, shall, by reason of such service, be considered, after this Convention shall have expired or after his discharge, to have lost his nationality or to be under any allegiance to His Britannic Majesty or to the United States as the case may be.

Article VII.

The present Convention shall be ratified by the President of the United States of America by and with the advice and consent of the Senate of the United States and by His Britannic Majesty, and the ratifications shall be exchanged at Washington or at London as soon as possible. It shall come into operation on the date on which the ratifications are exchanged, and shall remain in force until the expiration of sixty days after either of the contracting parties shall have given notice of termination to the other; whereupon any subject or citizen of either country incorporated into the military service of the other under this Convention shall be as soon as possible discharged therefrom.

In witness whereof the respective Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

DONE in duplicate at Washington the third day of June, in the year of our Lord one thousand nine hundred and eighteen.

ROBERT LANSING. [SEAL.]
READING. [SEAL.]

EXCHANGE OF NOTES RELATING TO ARTICLE I.

*The Ambassador of Great Britain on Special Mission to the
Secretary of State*

BRITISH EMBASSY,
Washington, June 3, 1918.

SIR:

With reference to the Military Service Convention between the United States and Great Britain signed today, I am instructed by His Majesty's Government to explain why the proviso to Article One does not limit the military service of citizens of the United States in Great Britain to those of the ages specified in the laws of the United States prescribing compulsory military service, as requested by the United States Government. The reason for the omission of this clause in the proviso is a desire to avoid the delay that would be involved in modifying the Military Service Acts 1916 to 1918, which control the operation of any convention of this character. I beg you, therefore, to be good enough not to press this proposal.

The effect of these Acts is to make United States citizens in Great Britain under this convention liable to military service between the ages of 18 and 49 both inclusive. The limitation of the ages of United States citizens in Great Britain for the purpose of military service to those prescribed in the laws of the United States relating to compulsory military service may, however, be attained without amendment of these Acts by exercise of the United States of its right of exemption under Article Three.

His Majesty's Government understand, therefore, that the United States Government will exercise their right under Article Three to exempt from compulsory military service in Great Britain all citizens of the United States in Great Britain, outside the ages specified in the laws of the United States prescribing compulsory military service.

I have the honor to be with the highest consideration, Sir,

Your most obedient, humble servant,

READING.

The Honorable ROBERT LANSING,
Secretary of State of the United States.

*The Secretary of State to the Ambassador of Great Britain on
Special Mission.*

DEPARTMENT OF STATE,
Washington, June 3, 1918.

Excellency:

I have the honor to acknowledge the receipt of Your Excellency's note of this date in regard to the Military Service Convention between the United States and Great Britain signed today, in which you state that you are instructed to explain why the proviso to Article One does not limit the military service of citizens of the United States in Great Britain to those of the ages specified in the laws of the United States prescribing compulsory military service as requested by the United States Government. In explanation Your Excellency states as follows:

"The reason for the omission of this clause in the proviso is a desire to avoid the delay which would be involved in modifying the Military Service Acts 1916 to 1918, which control the operation of any convention of this character. I beg you therefore to be good enough not to press this proposal.

"The effect of these Acts is to make United States citizens in Great Britain under this convention liable to military service between the ages of 18 and 49 years, both inclusive. The limitation of the ages of United States citizens in Great Britain for the purposes of military service to those prescribed in the laws of the United States relating to compulsory military service, may, however, be attained without amendment of these Acts by the exercise by the United States of its right of exemption under Article Three."

Your Excellency adds that

"His Majesty's Government understand, therefore, that the United States Government will exercise its right under Article Three to exempt from compulsory military service in Great Britain all citizens of the United States in Great Britain, outside the ages specified in the laws of the United States prescribing compulsory military service."

In reply I have the honor to inform your Excellency that the Government of the United States is pleased to accept this explanation of said Article One and in lieu of a clause in this Article limiting the military service of citizens of the United States in Great Britain to those of the ages specified in the laws of the United States prescribing compulsory military service to exercise its right under Article Three to exempt from compulsory military service in Great Britain all citizens of the United States in Great Britain outside of the ages

specified in the laws of the United States prescribing compulsory military service.

I have the honor to be, with the highest consideration,

Your Excellency's most obedient servant,

ROBERT LANSING.

His Excellency

THE EARL OF READING,

Ambassador of Great Britain

On Special Mission.

CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN RELATING
TO THE SERVICE OF CITIZENS OF THE UNITED STATES IN CANADA AND
OF CANADIANS IN THE UNITED STATES.¹

*Signed at Washington, June 3, 1918; ratifications exchanged
July 30, 1918.*

The President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions Beyond the Seas, Emperor of India, being convinced that for the better prosecution of the present war it is desirable that citizens of the United States in Canada and Canadian British subjects in the United States shall either return to their own country to perform military service in its army or shall serve in the army of the country in which they remain, have resolved to enter into a Convention to that end and have accordingly appointed as their Plenipotentiaries:

The President of the United States of America, Robert Lansing, Secretary of State of the United States, and

His Britannic Majesty, The Earl of Reading, Lord Chief Justice of England, High Commissioner and Ambassador Extraordinary and Plenipotentiary on Special Mission to the United States,

who, after having communicated to each other their respective full powers found to be in proper form, have agreed upon and concluded the following Articles:

Article I.

All male citizens of the United States in Canada (hereinafter called Americans) and all male British subjects in the United States (a) who were born or naturalized in Canada, and who, before proceeding to the United States, were ordinarily resident in Great Britain or Canada or in any other part of His Majesty's Dominions to which compulsory military service has been or may be hereafter by law

¹ U. S. Treaty Series, No. 634.

applied, or outside the British Dominions; or (b) who were not born or naturalized in Canada, but who, before proceeding to the United States, were ordinarily resident in Canada (hereinafter called Canadians) shall, unless before the time limited by this Convention they enlist or enroll in the forces of their own country or return to the United States or Canada, respectively, for the purpose of military service, be subject to military service and entitled to exemption or discharge therefrom under the laws and regulations, from time to time in force, of the country in which they are: *Provided*, that in respect to Americans in Canada, the ages for military service shall be the ages specified in the laws of the United States prescribing compulsory military service, and in respect to Canadians in the United States the ages for military service shall be for the time being twenty to forty-four years, both inclusive.

Article II.

Americans and Canadians within the age limits aforesaid who desire to enter the military service of their own country must enlist or enroll, or must leave Canada or the United States, as the case may be, for the purpose of military service in their own country before the expiration of sixty days after the date of the exchange of ratifications of this Convention, if liable to military service in the country in which they are at the said date; or, if not so liable, then before the expiration of thirty days after the time when liability shall accrue; or, as to those holding certificates of exemption under Article III of this Convention, before the expiration of thirty days after the date on which any such certificate becomes inoperative unless sooner renewed; or as to those who apply for certificates of exemption under Article III, and whose applications are refused, then before the expiration of thirty days after the date of such refusal, unless the application be sooner granted.

Article III.

The Government of the United States, through the Consul General at Ottawa, and His Britannic Majesty's Government through the British Ambassador at Washington may issue certificates of exemption from military service to Americans and Canadians, respectively, upon application or otherwise, within sixty days from the date of the exchange of ratifications of this Convention or within thirty days from the date when such citizens or subjects become liable to military service in accordance with Article I, provided that the applications be made or the certificates be granted prior to their entry into the military service of either country. Such certificates may be special or general, temporary or conditional and may be modified, renewed,

or revoked in the discretion of the Government granting them. Persons holding such certificates shall, so long as the certificates are in force, not be liable to military service in the country in which they are.

Article IV.

The Government of the United States and the Government of Canada will, respectively, so far as possible facilitate the return of Canadians and Americans who may desire to return to their own country for military service, but shall not be responsible for providing transport or the cost of transport for such persons.

Article V.

No citizen or subject of either country who, under the provisions of this Convention, enters the military service of the other shall, by reason of such service be considered, after this Convention shall have expired or after his discharge, to have lost his nationality or to be under any allegiance to the United States or to His Britannic Majesty as the case may be.

Article VI.

The present Convention shall be ratified by the President of the United States of America by and with the advice and consent of the Senate of the United States and by His Britannic Majesty and the ratifications shall be exchanged at Washington or at London as soon as possible. It shall come into operation on the date on which the ratifications are exchanged and shall remain in force until the expiration of sixty days after either of the contracting parties shall have given notice of termination to the other; whereupon any citizen or subject of either country incorporated into the military service of the other under this Convention shall be as soon as possible discharged therefrom.

In witness whereof the respective Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

DONE in duplicate at Washington the third day of June in the year of our Lord one thousand nine hundred and eighteen.

ROBERT LANSING. [SEAL.]
READING. [SEAL.]

PROTOCOL BETWEEN THE UNITED STATES AND ITALY RELATIVE TO ITALO-AMERICAN RADIO SERVICE.¹

Signed at Washington, March 27, 1918.

The undersigned, representatives of the Governments of the United States and Italy, met the 27th day of March, nineteen hundred and eighteen, at 11:30 a. m., at the State Département, Washington, D. C., and agreed upon the following articles:

Article I.

The Government of the United States and the Government of Italy, considering that there are no direct submarine cables connecting the two Countries, think it is most urgent to establish immediately a regular radio-service between the United States and Italy.

Article II.

The Government of the United States and the Government of Italy acquiesce in designating one American and one Italian wireless station of sufficient power to insure the radio communications between the two Countries. These stations will be determined upon and respectively notified by both parties in the agreement mentioned in Article VIII of this protocol.

Article III.

The radio line cannot be considered a duplicate of submarine cable route. Therefore, the Government of the United States and the Government of Italy, considering that there is no other direct system of communication between the two Countries, will insure transmission by priority over all other messages between the two Countries of their official urgent messages.

Article IV.

In principle radiograms regularly handled shall be limited in character to official, political, military, or naval urgent communications. This does not prevent the regular handling of official government press information.

¹ U. S. Treaty Series, No. 631-A.

Article V.

This new transatlantic radio line is to be used also to insure communications with Italy in case the cable lines by way of France and England should prove to be insufficient.

Article VI.

Official radiograms shall be in cipher; however radiograms conveying only official press information will be transmitted unciphered.

Article VII.

The United States and Italian authorities who are authorized to employ radio communications are the following:

Authorities residing in Washington: The Department of State; the Department of War; the Department of the Navy; the Italian Embassy; the Italian Military Attaché; the Italian Naval Attaché; and the Director of Naval Communications.

Authorities residing in Rome: The Ministry of Foreign Affairs; the Ministry of War; the Ministry of Marine; the Ministry of Posts and Telegrams; the Embassy of the United States; the Military Attaché of the United States; and the Naval Attaché of the United States.

Article VIII.

The technical and practical conditions under which the United States and Italy will employ this radio line will be determined in a further agreement between the communication services of the respective Governments. It is, of course, understood that systematic trials have to be made to perfect the various conditions, specially to determine the hours of service, in order to improve this important service.

[SEAL.]	ROBERT LANSING.
[SEAL.]	MACCHI DI CELLERE.

AN ACT TO AMEND SECTION FOUR THOUSAND AND SIXTY-SEVEN OF THE REVISED STATUTES BY EXTENDING ITS SCOPE TO INCLUDE WOMEN.¹

Approved, April 16, 1918.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four thousand and sixty-seven of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

¹ Public—No. 131—65th Congress.

"SEC. 4067. Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety."

PROCLAMATION EXTENDING REGULATIONS PRESCRIBING THE CONDUCT OF
ALIEN ENEMIES TO WOMEN.¹

April 19, 1918.

WHEREAS, by Act of Congress, approved the sixteenth day of April, one thousand nine hundred and eighteen, entitled "An Act to amend section four thousand and sixty-seven of the Revised Statutes by extending its scope to include women", the said section four thousand and sixty-seven of the Revised Statutes is amended to read as follows:

Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed, as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety;

¹ No. 1443.

WHEREAS, by sections four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, further provision is made relative to alien enemies;

AND WHEREAS a state of war has heretofore been declared and proclaimed to exist between the United States and the Imperial German Government and between the United States and the Imperial and Royal Austro-Hungarian Government;

NOW, THEREFORE, I, WOODROW WILSON, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution of the United States and the said sections of the Revised Statutes, do hereby further proclaim and direct that the conduct to be observed on the part of the United States towards all natives, citizens, denizens, or subjects of Germany or Austria-Hungary of the age of fourteen years and upwards, who shall be within the United States and not actually naturalized, shall be as follows:

All such natives, citizens, denizens or subjects of Germany or Austria-Hungary are enjoined to preserve the peace towards the United States and to refrain from crime against the public safety, and from violating the laws of the United States and of the States and Territories thereof, and to refrain from actual hostility or giving information, aid or comfort to the enemies of the United States, and to comply strictly with the regulations which are hereby or which have been or may be from time to time promulgated by the President; and so long as they shall conduct themselves in accordance with law, they shall be undisturbed in the peaceful pursuit of their lives and occupations and be accorded the consideration due to all peaceful and law-abiding persons, except so far as restrictions may be necessary for their own protection and for the safety of the United States; and towards such of said persons as conduct themselves in accordance with law, all citizens of the United States are enjoined to preserve the peace and to treat them with all such friendliness as may be compatible with loyalty and allegiance to the United States.

And all of such natives, citizens, denizens or subjects of Germany or Austria-Hungary who fail to conduct themselves as so enjoined, in addition to all other penalties prescribed by law, shall be liable to restraint, or to give security, or to remove and depart from the United States in the manner prescribed by sections four thousand and sixty-nine and four thousand and seventy of the Revised Statutes, and as prescribed in the regulations duly promulgated by the President;

And pursuant to the authority vested in me, I hereby declare and proclaim, as necessary in the premises and for the public safety, that Regulations 1 to 12 inclusive in the Proclamation issued by me under date of April 6th, 1917, and Regulations 13 to 20 inclusive in the Proclamation issued by me under date of November 16th, 1917 shall be and they hereby are extended to and declared applicable to all

natives, citizens, denizens or subjects of Germany, being females of the age of fourteen years and upwards, who shall be within the United States and not actually naturalized; provided, that this extension of Regulation 4 of the Proclamation issued by me under date of April 6th, 1917 shall not become effective until such time as may be fixed and declared by the Attorney General of the United States.

And pursuant to the authority vested in me, I hereby declare and proclaim, as necessary in the premises and for the public safety, that Regulations 1 to 3 inclusive in the Proclamation issued by me under date of December 11th, 1917 shall be and they are hereby extended to and declared applicable to all natives, citizens, denizens or subjects of Austria-Hungary, being females of the age of fourteen years and upwards, who shall be within the United States and not actually naturalized.

This Proclamation and the Regulations herein contained shall extend and apply to all land and water, continental or insular, in any way within the jurisdiction of the United States.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the District of Columbia, this nineteenth day of April, in the year of our Lord one thousand nine hundred and [SEAL] eighteen, and of the independence of the United States the one hundred and forty-second.

WOODROW WILSON.

By the President:

FRANK L. POLK

Acting Secretary of State.

EXECUTIVE ORDER AUTHORIZING PAYMENT OF MONEY OR TRANSFER OF
PROPERTY TO ALIEN PROPERTY CUSTODIAN.¹

February 5, 1918.

By virtue of the authority vested in me by an Act to define, regulate, and punish trading with the enemy, approved October 6, 1917, known as the Trading with the Enemy Act,² I hereby make the following orders, rules and regulations:

1. Paragraph XXX of the Executive Order dated October 12, 1917,² and made by me pursuant to said Act of Congress, is hereby revoked; and in place thereof it is hereby ordered:

XXX. Any person not an enemy, or ally of enemy, who owes to, or holds for or on account of, or on behalf of, or for the benefit of, an enemy or an ally of enemy, not holding a license granted by or in

¹ No. 2801.

² This SUPPLEMENT, January, 1918, pp. 27 and 51.

the exercise of the power and authority of the President under the provisions of said Trading with the Enemy Act any money or other property, or to whom any obligation or form of liability to such enemy, or ally of enemy, is presented for payment, may, having first obtained the consent of the Alien Property Custodian, pay, convey, transfer, assign, or deliver, to or upon the order of the Alien Property Custodian, said money or other property, with like effect as if such payment, conveyance, transfer, assignment or delivery were made in obedience to requirement pursuant to the provisions of Section 7, subsection (c), of said Trading with the Enemy Act.

2. Paragraph XXXI of said Executive Order dated October 12, 1917, is hereby revoked; and in place thereof it is hereby ordered:

XXXI. I hereby vest in the Alien Property Custodian the executive administration of all provisions of Section 8 (a) and Section 8 (b) of the Trading with the Enemy Act, including the power, authority and duty conferred or imposed upon the President by the provisions of said Section 8 (a), and the notice therein required to be given to the President shall be given to the Alien Property Custodian.

WOODROW WILSON.

THE WHITE HOUSE,
5 February, 1918.

EXECUTIVE ORDER PRESCRIBING RULES AND REGULATIONS RESPECTING THE EXERCISE OF THE POWERS AND AUTHORITY AND THE PERFORMANCE OF THE DUTIES OF THE ALIEN PROPERTY CUSTODIAN UNDER THE "TRADING WITH THE ENEMY ACT" AND PRIOR EXECUTIVE ORDERS PURSUANT THERETO, AND RESPECTING THE DEPOSIT AND INVESTMENT OF MONEYS RECEIVED BY OR FOR THE ACCOUNT OF THE ALIEN PROPERTY CUSTODIAN.¹

February 26, 1918.

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the Enemy Act,"² I hereby make the following orders, rules and regulations.

(1) *Definitions.*

(a) The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

(b) The word "enemy," as used herein (including subsequent definitions) shall be deemed to mean either an "enemy" or "ally of enemy," as the case may be.

¹ No. 2813.

² This SUPPLEMENT, January, 1918, p. 27.

(c) The words "right," "title," "interest," "estate," "power," and "authority" of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy.

(d) Any requirement made by the Alien Property Custodian pursuant to Section 7, subsection "c" of the "Trading with the Enemy Act" may be known as and called a demand and will be hereinafter referred to as a demand.

(2) *Demands Pursuant to Section 7, Subsection "c."*

(a) The Alien Property Custodian may make demand for the conveyance, transfer, assignment, delivery, and payment of any money or other property owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy not holding a license granted by me or in the exercise of my power and authority, which the Alien Property Custodian after investigation, shall determine is so owing or so belongs or is so held, together with every right, title, interest, and estate of the enemy in and to such money or other property and every power and authority of the enemy thereover, including (but without limiting the generality of the foregoing) the power and authority to affirm, ratify, approve, revoke, repudiate or disapprove, in whole or in part, and at any time or times, any power, agency, trust or other relation at the time existing, and also any act or omission theretofore done in the exercise of or pursuant to any power, agency, trust or other relation which the enemy could or might lawfully revoke, repudiate, disaffirm, affirm, ratify or approve, and also including (but without limiting the generality of the foregoing) the power and authority to direct, supervise, and control the future exercise of any power, agency, trust or other relation over such money or other property to the extent that the enemy could or might lawfully direct, supervise, and control the same. Or the Alien Property Custodian may qualify or limit any such demand in such manner and to such extent as he may in any case see fit and (without limiting the generality of the power to qualify and limit demands) he may in any case demand all or only such power and authority over the money or other property as he may see fit without demanding any conveyance, transfer, assignment, delivery or payment of such money or other property or any other right, title, interest, or estate therein or thereto except such as may be included within the power and authority demanded in the particular case over such money or other property.

A demand for the conveyance, transfer, assignment, delivery and payment of money or other property unless expressly qualified or limited shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover.

(b) Notice of any demand made by the Alien Property Custodian may be given to any person who, alone or jointly with others, may hold or have the custody or control of or may be exercising any right, power, or authority in or over or may be performing any duty concerning the money or other property mentioned in the demand; and, in any notice given, the Alien Property Custodian may require of the person notified the performance of any act or thing within the power of the person notified which may be necessary or proper to make the demand fully effective, or to establish proper acknowledgment, recognition, or evidence of the right, title, interest, and estate of the Alien Property Custodian in and to such money or other property and of the power and authority of the Alien Property Custodian thereover, and it shall be the duty of any person so notified to perform any act or thing so required. Such notice may be given in person or by mail.

(c) When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the "Trading with the Enemy Act" and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian.

(3) *Powers of Administration.*

(a) The Alien Property Custodian may appoint and clothe with necessary power and authority such agents, bailees, and attorneys in fact as he may find to be necessary or proper to carry out the provisions of the "Trading with the Enemy Act" and the Executive orders, rules, and regulations heretofore, hereby, or hereafter made, and prescribe the duties and fix the compensation of such agents, bailees, and attorneys in fact; and any depositary designated by the Alien Property Custodian may be appointed as such agent, bailee or attorney in fact. And the Alien Property Custodian may require bonds of such agents, bailees and attorneys in fact and fix the penalty and conditions thereof.

(b) The Alien Property Custodian may pay all reasonable and proper expenses which may be incurred in or about securing posses-

sion or control of money or other property and in or about collecting dividends, interest and other income therefrom, and in otherwise protecting and administering the same. So far as may be, all such expenses shall be paid out of, and in any event recorded as a charge against, the estate to which such money or other property belongs.

(c) The Alien Property Custodian may authorize depositaries designated by him and agents, bailees, and attorneys in fact appointed by him to deduct all expenses authorized or approved by the Alien Property Custodian, including the compensation of such depositaries, agents, bailees, and attorneys in fact, from any moneys collected by them and the payment by them to the Alien Property Custodian or into the Treasury of the United States of the net amount remaining in their hands.

(d) The Alien Property Custodian may exercise any right, power, or authority of the enemy in, to and over corporate stock, shares or certificates representing beneficial interests owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, including (1) the right to receive all notices issued by the corporation, unincorporated association, company or trustee which issued such stock, shares or certificates, to the holders or owners of similar stock, shares or certificates, (2) the right to exercise all voting power appertaining to such stock, shares or certificates, and (3) the right to receive all subscription rights, dividends and other distributions and payments, whether of capital or income, declared or made on account of such stock, shares or certificates, regardless of whether or not such stock, shares or certificates be in the possession of the Alien Property Custodian and regardless of whether or not such stock, shares or certificates have been transferred to the Alien Property Custodian upon the books of the corporation, association, company or trustee issuing the same.

The Alien Property Custodian may nominate persons who may, when duly elected or appointed, serve as directors, officers or employees of any corporation whose corporate stock or shares, in whole or in part, are owing or belonging to, or are held for, by, on account of, or on behalf of or for the benefit of an enemy.

The Alien Property Custodian may demand the transfer of corporate stock, shares or certificates representing beneficial interests to be made upon the books of any corporation, unincorporated association, company or trustee, issuing the same, into the name of the Alien Property Custodian or into the name of any depositary designated by the Alien Property Custodian for the account of the Alien Property Custodian, or, in the case of corporate stock or shares, into the name of any other person for the purpose of qualifying such person to serve as a director of the corporation issuing such corporate stock or shares; and it shall be the duty of any corporation, unincorporated association, company, or trustee to comply with such

demand when accompanied by the presentation of the certificates which represent such corporate stock, shares or beneficial interests. Provided that corporate stock or shares transferred into the name of any other person than the Alien Property Custodian or a designated depositary shall be indorsed by such person in blank and delivered to and held by the Alien Property Custodian or by a duly designated depositary.

(e) In respect of moneys, accounts payable, credits, notes or other obligations owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy, whether the payment or delivery or the mere transfer and assignment thereof be demanded, the Alien Property Custodian may exercise discretion in enforcing payment, granting indulgence, making extension or accepting security, and in exercising any other right, power or authority of the enemy.

(f) The Alien Property Custodian may sell and deliver any commodity or other tangible property which may be perishable or which may in the preservation thereof involve expense. And the Alien Property Custodian may sell and deliver any rights appurtenant to the ownership of corporate stock, shares or certificates of beneficial interests in cases where such rights would lapse unless exercised within a limited time. The Alien Property Custodian may manage, conduct, and operate any business belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy in cases where the continuation of such business may seem to be necessary to prevent waste or to protect such business. And the Alien Property Custodian may sell or otherwise dispose of such business or any part thereof, or the assets or any part thereof, whenever such sale shall seem to be necessary to prevent waste or to protect such business. And in the management, operation, conduct, sale or other disposition of such business the Alien Property Custodian may exercise every right, power and authority of the enemy.

(g) In cases of liquidation of an estate belonging to a partnership, association or unincorporated company in which an enemy may have an interest, the Alien Property Custodian may exercise every right, power, and authority of the enemy, including the right, power, and authority to sell the interest of the enemy in the event such sale seems necessary to prevent waste or to protect such interest.

(h) All sales made by the Alien Property Custodian may be conducted privately or publicly, with or without advertisement, and on such terms and conditions as to the Alien Property Custodian may seem proper.

In all cases of sales made by the Alien Property Custodian, all reasonable expenses incurred in and about such sales shall be deducted from the proceeds and the net amount remaining paid into the Treasury of the United States.

(i) The Alien Property Custodian is authorized to exercise any power conferred upon him by any license issued by me or in the exercise of the power and authority conferred upon me under the "Trading with the enemy Act" wherever such license involves any act or thing concerning any money or other property owing or belonging to or held for, by, on account of, or on behalf of or for the benefit of an enemy.

(4) *Statutory Powers of the Alien Property Custodian.*

Nothing herein contained is intended, nor shall anything herein contained be construed, to limit the powers conferred upon the Alien Property Custodian by the "Trading with the enemy Act."

(5) *Deposit and Investment of Moneys Received by the Alien Property Custodian.*

There shall be deposited in the Treasury of the United States, through the office of the Secretary of the Treasury—

(a) Any and all moneys (including checks and drafts payable on demand) paid to or received by the Alien Property Custodian pursuant to the "Trading with the enemy Act";

(b) Any and all moneys (including checks and drafts payable on demand) collected or received by the Alien Property Custodian, as dividends or interest or income that may become due upon any stocks, bonds, notes, time drafts, time bills of exchange, or other securities or property held by the Alien Property Custodian or by any depositary or depositaries designated as provided in said Act for the account of the Alien Property Custodian.

(c) Any and all moneys collected as the proceeds of any and all maturing obligations held by the Alien Property Custodian or by any such depositary or depositaries for the account of the Alien Property Custodian; and

(d) Any and all moneys paid to or received by the Alien Property Custodian as the proceeds of any sale or sales, made at any time pursuant to such rules and regulations as the President shall prescribe, of any and all property or rights which shall come into the possession of the Alien Property Custodian in pursuance of the provisions of said Act;

Provided, however, that the Alien Property Custodian may fix stated periods, not longer than quarter-yearly, for accounting by depositaries, agents, bailees, and attorneys in fact of all moneys received by them, and for the payment thereof by such depositaries, agents, bailees, and attorneys in fact to the Alien Property Custodian, who shall forthwith pay the same into the Treasury of the United States, as provided above, and that checks and drafts payable on

demand received by designated depositaries in payment of dividends, interest and income from property held by or for the account of the Alien Property Custodian may be collected by such depositaries for the account of the Alien Property Custodian; but that all other checks and drafts payable on demand shall be forthwith deposited by the Alien Property Custodian in the Treasury of the United States, as provided above.

Any and all moneys so deposited in the Treasury of the United States, as herein provided, as well as all moneys, if any, which may be paid to the Treasurer of the United States, as provided in Section 12 of said Act, and all interest, dividends or other income, if any, in respect of any property conveyed, transferred, assigned or delivered to the Treasurer of the United States, as provided in said Section 12, shall be credited by the Treasurer of the United States to the Secretary of the Treasury "for account of the Alien Property Custodian."

Any and all moneys so deposited in the Treasury of the United States, as herein provided, together with any interest or income received from the investment thereof, shall be subject to withdrawal by the Secretary of the Treasury for the purpose of making any payment or payments pursuant to the provisions of said Act, and, until so withdrawn, may be invested and reinvested, from time to time, by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness. The bonds and certificates of indebtedness, in which such moneys shall be so invested, shall be held by the Secretary of the Treasury for account of the Alien Property Custodian, subject to the provisions hereof and of said Act and to such further orders, rules or regulations as may, from time to time, be prescribed by me.

(6) *Amendments and Modifications of Prior Executive Orders.*

All other Executive orders heretofore made are hereby amended and modified to such extent as may be necessary to conform with the provisions hereof.

WOODROW WILSON.

THE WHITE HOUSE,
26 February, 1918.

EXECUTIVE ORDER PRESCRIBING ADDITIONAL RULES AND REGULATIONS,
AND MAKING CERTAIN DETERMINATIONS RESPECTING THE EXERCISE
OF THE POWERS AND AUTHORITY AND THE PERFORMANCE OF THE
DUTIES OF THE ALIEN PROPERTY CUSTODIAN.¹

July 16, 1918.

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading With the Enemy Act,"² as amended by "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and prior fiscal years, on account of war expenses and for other purposes," approved March 28, 1918,³ I hereby make the following orders, rules and regulations, and determinations.

Definitions.

1. The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

2. The word "enemy," as used herein, shall be deemed to mean either an "enemy" or "ally of enemy," as the case may be.

Powers of Management and Administration, Including Sale or Other Disposition.

The Alien Property Custodian shall have power, and he is authorized and directed, to hold, manage, administer, protect, preserve, control and sell or otherwise dispose of, in accordance with the following rules and regulations, any and all property other than money which has been or shall be conveyed, transferred, assigned, delivered, and/or paid over to him pursuant to the provisions of the Trading With the Enemy Act as amended and the Executive proclamations and orders issued pursuant thereto, or which has been or shall be required so to be conveyed, transferred, assigned, delivered and/or paid over to him.

1. The Alien Property Custodian shall have the power and authority to do any and all things reasonable and proper in or about the custody, management, administration, protection, preservation and control of any such property according to the nature and character of the property and the attendant circumstances, including

¹ No. 2916.

² This SUPPLEMENT, January, 1918, p. 27.

³ *Infra*, p. 292.

(but without limiting the generality of the foregoing) the power and authority to collect all bills, notes, accounts, dividends, interest, rents, royalties, annuities and other receivables, and income and profits and accumulations and distributions of principal or income; to pay all rents, royalties, interest and other accounts and liens or charges; to make repairs, additions and alterations to property, whether real or personal; to rent, lease or otherwise grant the use or right to use or occupy property of any kind; to insure property against loss, and to cancel or surrender insurance policies and collect return premiums and surrender values, and to do any other act or thing with respect to insurance or insurance policies; to grant by lease, license or otherwise, the right to use or other rights under or in respect of patents, copyrights, trade marks, trade secrets and other similar rights; to vote in person or by proxy shares of stock or other beneficial interest in corporations, unincorporated associations, companies or trusts upon any questions at all times and upon all matters upon which any owner of such stock or other beneficial interest shall have the right to vote, including the power and authority to vote for or against and to take part in any sale, dissolution, consolidation, amalgamation or reorganization of any sort, of any such corporation, unincorporated association, company or trust, or of its assets of any part thereof, and to exercise any rights or privileges that may be or become appurtenant to the ownership of such stock or other beneficial interest with like force and effect and under like circumstances in all respects as though the absolute owner thereof; to give any notices and file any papers or writings of any kind, proper or necessary for the creation, perfection, protection, liquidation or otherwise in respect of any claims, demands, choses-in-action or other rights of any kind, and to settle, compromise and adjust claims, demands and choses-in-action; to intervene in any suit or proceeding and to file and maintain claims, demands and suits of all kinds in or before, any court, board, commission or other body; to determine and pay all reasonable and proper expenses incurred in or about or with respect of the exercise of any of the powers and authority vested in the Alien Property Custodian or any depositary for him, including expenses that may be incurred in or about securing possession, custody or control of any such property, and including also taxes and other charges heretofore or hereafter lawfully assessed upon or against such property by any body politic; provided that this shall not be construed to require the payment of any stamp or other taxes upon or on account of conveyance, transfer, assignment or delivery of property to the Alien Property Custodian or to any agent, attorney, bailee, nominee or depositary for him; and provided further that this shall not in any way affect the power of the Commissioner of Internal Revenue or any regulations made by him or under his authority.

2. Whenever any such money or other property or any part or parcel thereof is or shall be subject to any claim of lien, charge or incumbrance, or is or shall be held or retained adversely to the Alien Property Custodian, or to any requirement with respect to such money or other property made by him, the Alien Property Custodian may compromise or settle such controversy and pay any such claim in any way that he shall decide to be proper and as though he were the absolute owner of the money or other property involved; and he shall have the power and authority to make any payment or payments necessary and to execute and deliver any instruments or writings necessary and proper to effect or evidence the same.

3. Whenever any such property or any part or parcel thereof shall be used or employed in the conduct or other operation of a mine, plant, factory, railroad or other transportation facility, warehouse, mercantile or trading establishment or any sort of a going business or undertaking, the Alien Property Custodian, in addition to the rights, powers and authority elsewhere herein conferred upon him, in respect of the property so used or employed, may continue the conduct or other operation of such business or undertaking; and for such purpose he shall have the right, power and authority to employ and discharge agents, attorneys, servants and other employees; to buy and sell supplies, materials and commodities required or necessary for the conduct of such business, or dealt in or handled thereby, or mined, produced, manufactured or created by it; to take out insurance; to require money owing by banks, trust companies or other depositaries on special or general deposit to be paid to him or upon his order; to collect debts and other receivables owing to the said business or undertaking or to the former enemy owner or owners thereof and created out of or by the operation of such business or undertaking, and also debts, accounts and other receivables accruing or arising out of the conduct or other operation of such business or undertaking, by the Alien Property Custodian or under his direction or authority; to pay the wages and salaries of agents, attorneys, servants and other employees, and rents, royalties, and other current accounts and liabilities; to intervene in any suit or action pending in any court or before any board, commission or other body, in which such business or undertaking or any of the property or assets thereof shall be involved or concerned and to prosecute or defend, as the case may be; to file, prosecute and maintain in the name of the Alien Property Custodian or otherwise as may be proper, any claim or suit arising out of or based upon transactions had prior or subsequent to the time when such property was conveyed, transferred, assigned, delivered and/or paid over to the Alien Property Custodian or was required so to be, but growing out of the conduct or operation of such business or undertaking or any other use, custody, control or management of any property or

assets thereof; and generally to manage, administer, preserve, conduct, operate and control such business or undertaking and any or all parts or parcels and assets thereof as though the absolute owner, either in the name of the Alien Property Custodian or otherwise as he shall determine.

4. The Alien Property Custodian may appoint agents, attorneys, bailees, depositaries and/or managers who, under his direction and control and within the limits of the authority conferred by him, shall be authorized and directed to hold, manage, administer, protect, preserve and otherwise control property conveyed, transferred, assigned, delivered or paid over to him or required so to be, or any part or parcel thereof; and they may be authorized and directed to continue the conduct or other operation of any going business or other undertaking which the Alien Property Custodian himself, as provided elsewhere herein, could continue. Such agents, attorneys, bailees, depositaries and managers shall have and exercise the rights, powers and authority which shall be from time to time conferred upon him or them by the Alien Property Custodian; and such rights, powers and authority may be enlarged, restricted or revoked by the Alien Property Custodian at any time and without giving any notice or reason therefor; and the remuneration of all such agents, attorneys, bailees, depositaries and managers shall be fixed by the Alien Property Custodian and may be increased or reduced at any time.

5. The Alien Property Custodian shall have full power and discretion with respect to property to be sold, and may sell any property or properties as an entirety or in such groups or parcels and at such time or times as he shall determine, and without reference to the previous enemy or ally of enemy ownership thereof. Whenever any such property shall be used or employed in the conduct or other operation of any mine, plant, factory, railroad or other transportation facility, mercantile establishment or any sort of going business or undertaking, the Alien Property Custodian may sell such property as a going business or undertaking and may include not only the tangible property but any and all patents, trade marks, trade names, good will and other intangible rights and assets; and any number of such going businesses or undertakings may be sold together as above specified.

6. Whereas said Trading With the Enemy Act as amended provides that "any property sold, except when sold to the United States, shall be sold only to American citizens at public sale to the highest bidder, after public advertisement of the time and place of sale, which shall be where the property or a major portion thereof is situated, unless the President, stating the reasons therefor in the public interest, shall otherwise determine",

Now therefore I do thus determine otherwise as follows:

(a) Shares of stock or other beneficial interest in a corporation,

unincorporated association, company or trust, and claims, receivables and intangibles of all kinds may be advertised and sold wherever the Alien Property Custodian shall determine; and it shall be immaterial whether such shares of stock or other beneficial interest and such claims, receivables and intangibles be represented or evidenced by certificates or instruments or writings of any kind, and whether the Alien Property Custodian shall or shall not have possession or control thereof in the event that the same shall be thus represented or evidenced.

(b) Any corporation incorporated within and under the authority of the laws of any state or territory of the United States or of any of its insular possessions shall be allowed to bid at any sale of any such property, but the Alien Property Custodian shall have the right to exclude from bidding at any such sale and/or from purchasing or otherwise acquiring property from him directly or indirectly, any corporation which he shall after investigation determine to be controlled, managed or operated wholly or mainly by or for the account or benefit of a person or persons not a citizen or citizens of the United States or of its insular possessions.

(c) The Alien Property Custodian, upon order of the President stating the reasons therefor, shall have the right to reject all bids for any property thus sold and to resell such property at public sale or otherwise as the President may direct; but the Alien Property Custodian may at or before any sale, by public announcement or by publication, fix a period after the expiration of which the right thus to reject all bids and to resell such property will not be exercised.

My reasons for the foregoing determinations in the public interest are:

(a) That such sales may be made at the place of favorable demand and under the best circumstances to secure the market price therefor.

(b) That bidders able to purchase and pay for the properties to be sold may be secured.

(c) That the powers of sale given to the Alien Property Custodian may be effectively exercised by him.

7. Any property sold by the Alien Property Custodian either at public or private sale may be sold for cash or upon credit; and in the latter event such security for the payment of that portion of the purchase price remaining unpaid may be taken as he shall deem proper in the premises. He shall be authorized to set a minimum or upset price upon any property offered for sale by him; to fix and prescribe the terms and conditions upon which bids will be received; to determine generally and specially qualifications to be met by persons offering to bid; to require deposits from prospective bidders; to determine generally or specially the nature and extent of information concerning any property or properties offered or to be offered

for sale which shall be given prospective bidders, and the inspection thereof which shall be allowed; to have made auditor's reports and appraisals of property or properties offered or to be offered for sale; and to make and establish general and special terms and conditions to govern any and all sales to be made by him. Any property or properties thus sold may be sold subject to or free from any or all debts, claims, obligations and liabilities of all kinds created or arising out of or in respect of, any such property or properties or the conduct or other operation of any such business or other undertaking by the Alien Property Custodian or otherwise; and subject to or free from liens, charges or incumbrances; and payment of such debts, claims, obligations, liabilities and liens, charges and incumbrances, and of all expenses of such sale or sales may be made out of the proceeds from such sale or sales, or may be required to be made or assumed by the purchaser, as the Alien Property Custodian shall determine.

8. All costs and expenses incurred by reason of or in respect of, and all claims and demands of every kind, character and description based upon or arising out of, the custody, management, administration, protection, preservation and control of any such property and the conduct or other operation of any such going business or other undertaking and the sale or other disposition of any such property, shall be limited to and paid or satisfied out of only the property or business or undertaking involved and out of which, on account of which, or in respect of which such cost, expenses, claim or demand shall have been incurred and shall have arisen or been created; provided that whenever such property or the income therefrom or the assets of any such going business or other undertaking shall be insufficient therefor, such cost, expenses, claim or demand shall be charged thereto, but may be paid or satisfied out of money or other property received from, or as the property of, the same enemy. Neither the Alien Property Custodian nor any agent, attorney, bailee, manager or depositary appointed by him shall be liable personally to any one for or on account of anything done or omitted in respect of, or for any debt or other obligation of any kind or character owing, created or growing out of or in any other way arising from, any such property or the custody, management, administration, protection, preservation, control and/or sale or other disposition thereof, and/or from the conduct or other operation of any going business or undertaking; except in the event of intentional injury or fraudulent misconduct by the person attempted to be charged with liability.

9. The Alien Property Custodian and agents, attorneys, bailees, managers and depositaries for him, within the limits of the authority granted by him, shall have power and authority to do any and all things reasonable or proper in or about or in respect of the exercise of any of the powers and authority specifically granted above; and

in addition are authorized and directed hereby to manage all such property and to do any act or things in respect thereof or make any disposition thereof or any part thereof by sale or otherwise and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof, in like manner as though the Alien Property Custodian were the absolute owner thereof, subject to no limitations or restrictions other than those specifically set forth herein or in said "Trading With the Enemy Act," as amended or any prior Executive orders issued pursuant thereto not in conflict herewith.

Power to Issue Requirements Not Inconsistent with Licenses Granted Under the Authority of the President.

1. Whenever the Alien Property Custodian shall after investigation determine that any money or other property, including any going business or other undertaking, which is being held, managed, used or employed under a license granted by the President, or in the exercise of the power and authority conferred upon the President by said Trading With the Enemy Act as amended, is owing or belonging to or held for, by, on account of, on behalf of, or for the benefit of an enemy or ally of enemy, and such license provides as one of its terms or conditions that such property shall, upon demand or requirement of the Alien Property Custodian, be conveyed, transferred, assigned, delivered, and/or paid over to him, the Alien Property Custodian may, without the revocation of such license, require that said money or other property or any part or parcel thereof be conveyed, transferred, assigned, delivered or paid over to him; subject, however, to the continued exercise of such license, but under his supervision or under such other supervision as he may prescribe, and for such period of time or until the happening of such event as he shall prescribe. Whenever such money or property or any part thereof, at the time such requirement is made, shall be used or employed in or about the conduct or management of any mine, plant, factory, railroad or other transportation facility, warehouse, mercantile or trading establishment or any sort of a going business or undertaking, the Alien Property Custodian may require that such money or other property and/or the proceeds from the conduct or management of such business be conveyed, transferred, assigned, delivered or paid over to him, subject to the continued exercise of such license and the continued conduct or management of such business or other undertaking as above provided; and he may leave all or such part of the money or other property of such business or other undertaking in the possession of the licensee or the agent or representative of the licensee to be used, disposed of, and accounted for, in the continued exercise of such license. Any requirement made

by the Alien Property Custodian pursuant to the provisions hereof shall be subject to modification or change by him at any time prior to the final compliance therewith. Any of such property other than money, including any such going business or undertaking, may be advertised and sold by the Alien Property Custodian, subject to the exercise of any such license, but for the account of the Alien Property Custodian or for the account of the purchaser as the Alien Property Custodian may determine; and until the purchaser of such property shall be placed in the possession thereof or during such other period as the Alien Property Custodian may determine.

Effect upon the Statutory Powers of the Alien Property Custodian and upon Prior Executive Orders.

1. Nothing herein contained shall limit or shall be construed to limit, in any way the rights, powers and authority conferred upon the Alien Property Custodian by the "Trading With the Enemy Act" and the amendments thereto and the Executive orders heretofore issued pursuant thereto.

2. All Executive orders heretofore made are amended and modified hereby to such an extent as may be necessary to conform with the provisions hereof; but with this exception, all of such orders in force and effect at the time this order is issued are expressly ratified and continued in full force and effect.

WOODROW WILSON.

THE WHITE HOUSE,
16 July, 1918.

EXTRACT FROM URGENT DEFICIENCY ACT RELATING TO ALIEN PROPERTY CUSTODIAN.¹

Approved March 28, 1918.

The President is authorized to acquire the title to the docks, piers, warehouses, wharves, and terminal equipment and facilities on the Hudson River now owned by the North German Lloyd Dock Company and the Hamburg-American Line Terminal and Navigation Company, two corporations of the State of New Jersey, if he shall deem it necessary for the national security and defense: *Provided*, That if such property cannot be procured by purchase, then the President is authorized and empowered to take over for the United States the immediate possession and title thereof. If any such property shall be taken over as aforesaid, the United States

¹ Public—No. 109—65th Congress.

shall make just compensation therefor to be determined by the President. Upon the taking over of said property by the President, as aforesaid, the title to all such property so taken over shall immediately vest in the United States: *Provided further*, That section three hundred and fifty-five of the Revised Statutes of the United States shall not apply to any expenditures herein or hereafter authorized in connection with the property acquired.

The fourth paragraph of section twelve of the "Trading with the enemy Act," approved October sixth, nineteen hundred and seventeen,¹ is amended to read as follows:

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: *Provided*, That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: *Provided further*, That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than \$10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent

¹ This SUPPLEMENT, January, 1918, p. 27.

such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

EXECUTIVE ORDER CONCERNING CERTAIN SALES TO BE CONDUCTED BY THE
ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH
THE ENEMY ACT" AND AMENDMENTS THEREOF.¹

April 2, 1918.

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes", approved October 6, 1917, known as the "Trading with the enemy Act",² and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes", approved March 28, 1918,³ I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian may sell at private sale, without public or other advertisement, any live stock, feed or food stuffs, hides and other animal products, agricultural products, fertilizers, chemicals, drugs, essential oils, lumber, cotton, tobacco, furniture, books, glass and china ware, wearing apparel, jewelry, precious stones, pictures, ornaments, bric-a-brac, objects of art, raw or finished textile materials, trunks, boxes, casks and containers of all kinds, partially or completely manufactured metals, fabrics or other articles, rubber and rubber products, and all kinds of merchandise, in lots having a market value at the time and place of sale not exceeding Ten Thousand Dollars (\$10,000) per lot. Any such sale may be conducted at the place where such property, or the greater portion thereof, is situated, or elsewhere, and upon such terms and conditions as to the Alien Property Custodian, or his authorized agent, may seem proper.

My reasons for the foregoing determination, order, rule and regulation are:

(a) The properties described in the lots mentioned are not customarily sold and cannot usually be sold to advantage either at public sale after public or other advertisement, or at the place where such properties, or the greater portion thereof, are situated.

¹ No. 2832.

² This SUPPLEMENT, January, 1918, p. 27.

³ *Supra*, p. 292.

(b) The sales hereby authorized may be made at the time and place of favorable demand, and upon such terms and conditions as may be necessary to secure the market price.

(c) Unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
2 April, 1918.

AN EXECUTIVE ORDER CONCERNING A SALE TO BE CONDUCTED BY THE ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.¹

May 9, 1918.

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes", approved October 6, 1917, known as the "Trading with the enemy Act",² and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes", approved March 28, 1918,³ I hereby, in the public interest, make the following determination, order, rule, and regulation:

The Alien Property Custodian is hereby authorized to sell at private sale, without public or other advertisement, the following property, to wit:

279,232 pounds, more or less, of nickel: property of Hammar and Company, Hamburg, Germany, Hammar and Company, Ltd., Stockholm, Sweden, and other enemies unknown: same now being in the possession of the American Dock Company, Tompkinsville, Staten Island, New York.

Such sale may be made in one or more lots and may be conducted at the place where the property, or the major portion thereof, is situated, or elsewhere, and upon such terms and conditions as to the Alien Property Custodian, or his duly authorized agent may seem proper.

My reasons for the foregoing determination, order, rule and regulation are:

(a) That the property described is not customarily sold and can-

¹ No. 2858.

² This SUPPLEMENT, January, 1918, p. 27.

³ *Supra*, p. 292.

not usually be sold to advantage either at public sale after public or other advertisement, or at the place where such property, or the greater portion thereof, is situated.

(b) That the property described may be sold to such manufacturers as may be designated by the Ordnance Department of the War Department for war purposes, and therefore for direct utilization by the United States Government.

(c) That unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
9 May, 1918.

EXECUTIVE ORDER CONCERNING CERTAIN SALES TO BE CONDUCTED BY THE ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH THE ENEMY ACT" AND AMENDMENTS THEREOF.¹

July 15, 1918.

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes", approved October 6, 1917, known as the "Trading with the enemy Act",² and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes", approved March 28, 1918,³ I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian may sell at private sale, without public or other advertisement, any real property or any right, title, or interest therein of whatsoever kind; ground rents, leaseholds, options on real or personal property, stocks, beneficial interests in stocks, including voting trust certificates, and all other rights appurtenant to the ownership of stock, bonds, negotiable instruments or evidences of indebtedness, seats on stock or other exchanges; in parcels, lots, or quantities having a market value at the time of sale not exceeding Ten Thousand Dollars for each parcel, lot or quantity sold. Any such sale may be conducted at such place and upon such terms and conditions as to the Alien Property Custodian, or his authorized agent, may seem proper.

My reasons for the foregoing determination, order, rule and regulation are:

¹ No. 2914.

² This SUPPLEMENT, January, 1918, p. 27.

³ *Supra*, p. 292.

(a) The properties above classified cannot usually be sold to the best advantage at public sale after public or other advertisement.

(b) The sales hereby authorized may be made at the time and place of most favorable demand and upon such terms and conditions as may be necessary to secure the best market price.

(c) Unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
15 July, 1918.

EXECUTIVE ORDER CONCERNING CERTAIN SALES TO BE CONDUCTED BY THE
ALIEN PROPERTY CUSTODIAN PURSUANT TO THE "TRADING WITH
THE ENEMY ACT" AND AMENDMENTS THEREOF.¹

August 29, 1918.

By virtue of the authority vested in me by "An Act to define, regulate and punish trading with the enemy, and for other purposes", approved October 6, 1917, known as the "Trading with the enemy Act",² and the amendment to such Act embodied in "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes", approved March 28, 1918,³ I hereby, in the public interest, make the following determination, order, rule and regulation:

The Alien Property Custodian may sell at private sale, without public or other advertisement, any seats upon or memberships in, any stock, cotton, grain, produce, or other exchanges incorporated or organized and existing anywhere within the United States as defined in the "Trading with the enemy Act"; and any such sale or sales may be made and conducted wherever and upon such terms and conditions as the Alien Property Custodian or his authorized agent shall determine.

My reasons, in the public interest, for the foregoing determination, order, rule and regulation are:

(a) The methods required by law and the character of said property to be pursued in the sale thereof are such that the power of sale vested in the Alien Property Custodian cannot be exercised effectively except at private sale; in that such seats upon or memberships in said exchanges can be purchased only by persons who are already members of said exchange or who are approved by said ex-

¹ No. 2949.

² This SUPPLEMENT, January, 1918, p. 27.

³ *Supra*, p. 292.

change according to its Constitution and By-Laws, and such seats upon or memberships in said exchanges can be sold and transferred therefore only to persons who are members of, or who are approved by the exchange the seat upon or membership in which is the subject matter of sale.

(b) The sales hereby authorized may be made at the time and place of most favorable demand and upon such terms and conditions as may be necessary to secure the best market price.

(c) Unnecessary expense, delay and inconvenience may be avoided.

WOODROW WILSON.

THE WHITE HOUSE,
29 August, 1918.

EXECUTIVE ORDER WITH RESPECT TO ORENSTEIN AND KOPPEL-ARTHUR
KOPPEL ACTIENGESellschaft COMMONLY KNOWN AS ORENSTEIN-
KOPPEL COMPANY.¹

June 15, 1918.

By virtue of the authority vested in me by "An Act to define, regulate, and punish trading with the enemy, and for other purposes", approved October 6, 1917, known as the "Trading with the enemy Act",² as amended by "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June thirtieth, nineteen hundred and eighteen, and prior fiscal years, on account of war expenses and for other purposes", approved March 28, 1918,³ I hereby make the following determination, and orders, rules, and regulations.

1. I do determine hereby, after investigation, that Orenstein and Koppel-Arthur Koppel Actiengesellschaft is an enemy not holding a license granted by the President within the purview of said "Trading with the enemy Act" as amended and the proclamations and Executive orders issued in pursuance thereof, and that all and singular the property and assets of every kind, character, and description held by or in the name of Koppel Land Company, Beaver Connecting Railroad Company, Koppel Water Company, Pennsylvania Car and Manufacturing Company, Orenstein-Arthur Koppel Company, a corporation of the Commonwealth of Pennsylvania, Universal Railway Products Company, and Koppel Sales Company belong to and are held for, by, on account of, on behalf of, and for the benefit of said Orenstein and Koppel-Arthur Koppel Actiengesellschaft.

(2) The Alien Property Custodian, duly qualified and acting

¹ No. 2885.

² This SUPPLEMENT, January, 1918, p. 27.

³ *Supra*, p. 292.

under the provisions of said "Trading with the enemy Act" as amended, and the proclamations and Executive orders issued in pursuance thereof, shall have power and he is authorized and directed to hold, manage, administer, protect, preserve, control, and sell or otherwise dispose of in accordance with the following rules and regulations, any and all property, other than money, which has been or shall be conveyed, transferred, assigned, delivered, and/or paid over to him as the property of said Orenstein and Koppel-Arthur Koppel Actiengesellschaft, pursuant to the provisions of the "Trading with the enemy Act" as amended, and the proclamations and Executive orders issued pursuant thereto, or which has been or shall be required so to be.

(a) The Alien Property Custodian and depositaries for him under his direction and control and within the limits of the authority granted by him to them, shall have the power and authority to do any and all things reasonable and proper in or about or for the custody, management, administration, protection, preservation and control of any such property according to the nature and character of the property and the attendant circumstances, including (but without limiting the generality of the foregoing) the power and authority to collect all bills, notes, accounts, dividends, interest, rents, royalties, annuities and other receivables, and income and profits and accumulations and distributions of principal or income; to pay rents, royalties, interest and other accounts and liens or charges; to make repairs, additions and alterations to property, whether real or personal; to rent, lease or otherwise grant the use or right to use or occupy property of any kind; to insure property against loss, and to cancel and surrender insurance policies and collect return premiums and surrender values, and to do any other act or thing in or about insurance or insurance policies; to grant by lease, license or otherwise, the right to use, or other rights, under or with respect of patents, copyrights, trade marks, trade secrets and other similar rights; to vote shares of stock or other beneficial interest in corporations, unincorporated associations, companies or trusts upon any questions at all times and upon all matters upon which any owner of such stock or other beneficial interest shall have the right to vote, and as the holder of such shares of stock or other beneficial interest to vote for or against and to take part in any sale, dissolution, consolidation, amalgamation or reorganization of any sort, of any such corporation, unincorporated association, company or trust, or of its assets or any part thereof, and to exercise any rights or privileges that may be or become appurtenant to the ownership of such stock or other beneficial interest with like force and effect and under like circumstances in all respects as though the absolute owner thereof; to give any notices and file any papers or writings of any kind proper or necessary for the creation, perfection, protection, liquidation or

otherwise in respect of any claims, demands, choses in action or other rights of any kind and to settle, compromise and adjust claims, demands, choses in action or other rights; to intervene in any suit or proceeding before any court, board, commission or other body and to file and maintain claims, demands and suits of all kinds in or before any court, board, commission or other body; to determine and pay all reasonable and proper expenses incurred in or about or with respect of the exercise of any of the powers and authority vested in the Alien Property Custodian or any depositary for him, including expenses that may be incurred in or about securing possession, custody or control of any such property, and including also taxes and other charges heretofore or hereafter lawfully assessed upon or against such property by any body politic; provided that this shall not be construed to authorize the payment of any stamp or other taxes upon or on account of conveyance, transfer, assignment or delivery of property to the Alien Property Custodian or any depositary or nominee for him; and provided further that this shall not in any way affect the power of the Commissioner of Internal Revenue or any regulations made by him or under his authority.

(b) Whenever such property or any part or parcel thereof is or shall be held or retained adversely to the Alien Property Custodian or to any requirement of or concerning such property made by the Alien Property Custodian, or under any claim of lien, charge or incumbrance, the Alien Property Custodian may compromise or settle such controversy or claim as though he were the absolute owner thereof, in any way he shall decide proper; and he shall have the power and authority to make any payment or payments necessary, and to execute and deliver any instrument or writings necessary or proper to effect or evidence the same.

(c) Whenever any such property or any part or parcel thereof shall be used or employed in the conduct or other operation of a mine, plant, factory, railroad or other transportation facility, warehouse, mercantile or trading establishment or any sort of a going business or undertaking, the Alien Property Custodian may continue the conduct or other operation of such business or undertaking; and for such purpose he shall have the right, power and authority to employ and discharge agents, attorneys, servants and other employees; to buy and sell supplies, materials and commodities required or necessary for the conduct of such business, or dealt in or handled thereby, or mined, produced, manufactured or created by it; to take out insurance; to require money owing by banks, trust companies or other depositaries on special or general deposit to be paid to the Alien Property Custodian or upon his order; to collect debts and other receivables owing to the said business or undertaking or to the former enemy owner or owners thereof and created out of or by the operation of such business or undertaking, and also debts, accounts and

other receivables accruing or arising out of the conduct or other operation of such business or undertaking, by the Alien Property Custodian or under his direction or authority; to pay the wages and salaries of agents, attorneys, servants and other employees, and rents, royalties, and other current accounts and liabilities; to intervene in any suit or action pending in any court or before any board, commission or other body, in which such business or undertaking or any of the property or assets thereof shall be involved or concerned and to prosecute or defend, as the case may be; to file, prosecute and maintain any claim or suit in the name of the Alien Property Custodian or of any manager or managers appointed by him as hereinafter provided, or otherwise, arising out of or based upon transactions had prior or subsequent to the time when such property was conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian or was required so to be, growing out of the conduct or operation of such business or undertaking or any other use, custody, control or management of any property or assets thereof; and generally to manage, administer, preserve, conduct, operate and control such business or undertaking and any or all parts or parcels and assets thereof as though the absolute owner or owners thereof, either in the name of the Alien Property Custodian or otherwise as he shall determine.

(d) The Alien Property Custodian may appoint a manager or managers who, under his direction and control and within the limits of the authority conferred by him, shall be authorized and directed to hold, manage, administer, protect, preserve and otherwise control such property or any part or parcel thereof; and any manager or managers thus appointed shall be authorized and directed to continue the conduct or other operation of any going business or other undertaking which the Alien Property Custodian himself as provided elsewhere herein could continue. Such manager or managers, either generally or specially as the Alien Property Custodian shall from time to time determine and order or authorize, shall have and exercise the rights, powers and authority conferred upon him or them by the Alien Property Custodian; and such rights, powers and authority may be enlarged, restricted or revoked by the Alien Property Custodian at any time and without giving any notice or reason therefor. The remuneration of all such managers shall be fixed by the Alien Property Custodian and may be increased or reduced at any time.

(e) The Alien Property Custodian shall have the right to sell or otherwise dispose of any or all of such property whenever in his opinion such sale or other disposition is in the public interest; and such property may be sold or otherwise disposed of in such parcel or parcels as he shall determine. Any property when sold, except when sold to the United States, shall be sold at public sale to the highest bidder, after public advertisement of the time and place of

sale, which time shall be when the Custodian shall determine and which place shall be on the premises at the plant of said Orenstein and Koppel-Arthur Koppel Actiengesellschaft at Koppel, Beaver County, Pennsylvania. The Alien Property Custodian, upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct; but the Alien Property Custodian may at or before any sale, by public announcement or by publication fix a period after the expiration of which the right thus to reject all bids and to resell such property will not be exercised. Such property shall be sold only to American citizens, provided that any corporation incorporated within or under the authority of the laws of any State or Territory of the United States shall be considered for such purposes an American citizen; but the Alien Property Custodian shall have the right to exclude from such bidding any corporation which he shall, after investigation, determine to be controlled, managed or operated by, for, on account of, on behalf of or for the benefit of an enemy or enemies, and/or to exclude any such corporation from purchasing or otherwise acquiring any of such property from him.

(f) The Alien Property Custodian shall have full power and discretion with respect to the sale of such property and may sell the same as an entirety or may sell any and all parts thereof in such groups or parcels and at such time or times as he shall determine. He may sell any of such property used or employed in the conduct or operation of any mine, plant, factory, railroad or other transportation facility, mercantile establishment, or any sort of going business or undertaking as a going business or undertaking and may include not only the tangible property but any and all patents, trade marks, trade names, good will and other intangible rights and assets.

(g) The Alien Property Custodian may sell such property and any and all parts and parcels thereof for cash or upon credit; and in the latter event, such security for the payment of that portion of the purchase price remaining unpaid may be taken as he shall deem proper in the premises. He shall be authorized to set a minimum or upset price on any property offered for sale by him, and to fix and prescribe the terms and conditions upon which bids will be received, and to determine, generally or specially, qualifications to be met by persons offering to bid; to require deposits from prospective bidders; to determine, generally or specially, the nature and extent of information concerning any property or properties offered or to be offered for sale, which shall be given prospective bidders, and the inspection thereof which shall be allowed; to have made auditor's reports, and appraisals of property or properties offered or to be offered for sale, and generally to make and establish, generally or specially, terms and conditions to govern any or all sales to be made by him. Any

property or properties thus sold may be sold subject to or free from any or all debts, claims and liabilities of all kinds created or arising out of or in respect of any such property or properties or the conduct or other operation of any such business or other undertaking; and subject to or free from liens, charges or incumbrances; and payment thereof and of all expenses of such sale or sales may be made out of the proceeds from such sale or sales, or may be required to be made or assumed by the purchaser, as the Alien Property Custodian shall determine.

(h) All costs and expenses, including repairs made, taxes or other charges paid, remuneration of any and all depositaries, agents and managers and all payments of every kind made by the Alien Property Custodian or under his authority, and all claims, rights and demands of every kind, character and description based upon or arising out of the custody, management, administration, preservation, control and sale or other disposition of property by the Alien Property Custodian or under his authority, shall be limited to and enforced against and paid or satisfied out of only the property or business or undertaking out of which, on account of which, or in respect of which said costs, charges, expenses, claim right or demand shall have arisen or been created; provided that whenever such property or the income therefrom shall be insufficient for such purpose, same may be paid out of other moneys or properties required or received from or on account of the said enemy, all of such payments, however, being charged against the property on account of which or in respect of which same shall be made. Insofar as possible all such payments shall be made out of income from or profits arising from or out of such property or going business or undertaking before the corpus thereof shall be used for such purpose. Neither the Alien Property Custodian nor any agent or manager appointed by him shall be liable personally for any debt or other obligation of any kind or character owing, created, or growing out of or in any other way arising from any such property or the custody, management, administration, protection, preservation, control and/or sale or other disposition thereof and/or from the conduct or other operation of any going business or undertaking; and in no event and under no circumstances shall the Alien Property Custodian or any agent or manager appointed by him be liable to any one for, or on account of, anything done or omitted in or about or in respect of any such property or the control or other operation of any such going business or other undertaking except in cases of intentional injury or fraudulent misconduct by the person attempted to be charged with such liability.

(i) The Alien Property Custodian and depositaries, agents and managers for him, within the limits of the authority granted by him, shall have the power and authority to do any and all things reasonable or proper in or about or in respect of the exercise of any of the

powers and authority specifically granted above, and in addition are hereby authorized and directed to manage all such property and to do any act or things in respect thereof or make any disposition thereof or any part thereof by sale or otherwise and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof, in like manner as though the Alien Property Custodian were the absolute owner thereof, subject to no limitations or restrictions other than those specifically set forth herein or in said "Trading with the enemy Act" as amended or any prior Executive orders issued pursuant thereto not in conflict herewith.

My reasons in the public interest for the foregoing determinations, rules and regulations are that they are necessary to enable the Alien Property Custodian to perform the duties imposed upon him and to exercise the powers and authority granted to him with respect to said Orenstein and Koppel-Arthur Koppel Actiengesellschaft, and any and all properties belonging to or held by, for, on account of, on behalf of, or for the benefit of said enemy, properly and effectively.

WOODROW WILSON.

THE WHITE HOUSE,
15 June, 1918.

AN ACT TO GIVE INDEMNITY FOR DAMAGES CAUSED BY AMERICAN FORCES
ABROAD.¹

Approved, April 18, 1918.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That claims of inhabitants of France or of any other European country not an enemy or ally of an enemy for damages caused by American military forces may be presented to any officer designated by the President, and when approved by such an officer shall be paid under regulations made by the Secretary of War.

SEC. 2. That claims under this statute shall not be approved unless they would be payable according to the law or practice governing the military forces of the country in which they occur.

SEC. 3. That hereafter appropriations for the incidental expenses of the Quartermaster Corps shall be available for paying the claims herein described.

SEC. 4. That this statute does not supersede other modes of indemnity now in existence and does not diminish responsibility of any member of the military forces to the person injured or to the United States.

¹ Public—No. 133—65th Congress.

PROCLAMATION MAKING CERTAIN FURTHER EXPORTS UNLAWFUL IN TIME OF WAR.¹

November 28, 1917.

WHEREAS Congress has enacted, and the President has on the fifteenth day of June, 1917, approved a law which contains the following provisions:²

Whenever during the present war the President shall find that the public safety shall so require, and shall make proclamation thereof, it shall be unlawful to export from or ship from or take out of the United States to any country named in such proclamation any article or articles mentioned in such proclamation, except at such time or times, and under such regulations and orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: Provided, however, that no preference shall be given to the ports of one State over those of another.

NOW, THEREFORE, I, WOODROW WILSON, PRESIDENT OF THE UNITED STATES OF AMERICA, DO HEREBY PROCLAIM to all whom it may concern, that the public safety requires that the following articles (in addition to the articles controlled by the second division of the Proclamation of August 27, 1917),³ namely: iron and steel wire rope, cable and strands consisting of six or more wires; stud link chain cable; micrometers and calipers; lathe chucks; antimony, antimony ore, asbestos, balata, mica, mica splittings, strontium ores, titanium, wolframite and iridium; arsenic and its compounds, opium, caustic soda, soda ash, methylethyl ketone and wood alcohol; acetic acid, glacial acetic acid, acetate of cellulose and all acetates; animal oils and vegetable oils; beans, eggs, peanut meal, flaxseed, soya bean meal, soya bean oil, starch, canned peas, canned tomatoes, canned corn, dried prunes, dried apricots, dried apples, dried raisins and dried peaches; quebracho and chestnut extracts; vegetable fibre bags and bagging, except cotton bags and bagging; rubber, sponges, gutta-joolatong, gutta-percha, gutta-siak, shellac, seedlac and cinchona bark; hospital gauze and surgical instruments; yellow pine wood measuring 1' x 1' x 25' and larger sizes; and poster paper: shall not, on and after the first day of December in the year One Thousand Nine Hundred and Seventeen, be exported from or shipped from or taken out of the United States or its territorial possessions to Abyssinia, Afghanistan, Argentina, Belgium, her colonies, possessions or protectorates, Bolivia, Brazil, China, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, France, her colonies, possessions or protectorates, Great Britain, her colonies, possessions

¹ No. 1410.

² This SUPPLEMENT, October, 1917, p. 178.

³ *Ibid.*, p. 206.

or protectorates, Guatemala, Haiti, Honduras, Italy, her colonies, possessions or protectorates, Japan, Liberia, Mexico, Monaco, Montenegro, Morocco, Nepal, Nicaragua, the colonies, possessions or protectorates of The Netherlands, Oman, Panama, Paraguay, Persia, Peru, Portugal, her colonies, possessions or protectorates, Roumania, Russia, Salvador, San Marino, Serbia, Siam, Uruguay or Venezuela, or to any territory occupied by the military forces of the United States or the nations associated with the United States in the war, except at such time or times, and under such regulations and orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress.

The regulations, orders, limitations and exceptions prescribed will be administered by and under the authority of the War Trade Board, from whom licenses, in conformity with said regulations, orders, limitations and exceptions, will issue. Said Proclamation of August 27, 1917, is hereby confirmed and continued, and all rules and regulations heretofore made in connection therewith or in pursuance thereof, including the Executive Order of October 12, 1917,¹ are likewise hereby confirmed and continued and made applicable to this Proclamation.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE in the District of Columbia, this 28th day of November
in the year of our Lord One Thousand Nine Hundred
[SEAL] and Seventeen and of the Independence of the United
States of America the One Hundred and Forty-Second.

WOODROW WILSON.

By the President,

ROBERT LANSING,

Secretary of State.

PROCLAMATION REGARDING EXPORTS IN TIME OF WAR.²

February 14, 1918.

WHEREAS Congress has enacted, and the President has on the fifteenth day of June, 1917, approved a law which contains the following provisions:³

Whenever during the present war the President shall find that the public safety shall so require, and shall make proclamation thereof, it shall be unlawful to export from or ship from or take out of the United States to any country named in such proclamation any article or articles mentioned in such proclama-

¹ This SUPPLEMENT, January, 1918, p. 51.

² No. 1428.

³ This SUPPLEMENT, October, 1917, p. 178.

tion, except at such time or times, and under such regulations and orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: Provided, however, that no preference shall be given to the ports of one State over those of another.

And whereas the President has heretofore by proclamations dated July 9, 1917,¹ August 27, 1917,¹ September 7, 1917,¹ and November 28, 1917,² declared certain exports in time of war unlawful, and the President now finds that the public safety requires that such proclamations be amended and supplemented in respect to the articles and countries hereinafter mentioned;

NOW, THEREFORE, I, WOODROW WILSON, PRESIDENT OF THE UNITED STATES OF AMERICA, DO HEREBY PROCLAIM to all whom it may concern, that the public safety requires that the following articles, namely: all kinds of arms, guns, ammunition and explosives, machines for their manufacture or repair, component parts thereof, materials or ingredients used in their manufacture, and all articles necessary or convenient for their use; all contrivances for or means of transportation on land or in the water or air, machines used in their manufacture or repair, component parts thereof, materials or ingredients used in their manufacture, and all instruments, articles and animals necessary or convenient for their use; all means of communication, tools, implements, instruments, equipment, maps, pictures, papers and other articles, machines and documents necessary or convenient for carrying on hostile operations; all kinds of fuel, food, foodstuffs, feed, forage and clothing, and all articles and materials used in their manufacture; all chemicals, drugs, dyestuffs and tanning materials; cotton, wool, silk, flax, hemp, jute, sisal and other fibres and manufactures thereof; all earths, clay, glass, sand, stone and their products; animals of every kind, their products and derivatives; hides, skins and manufactures thereof; all non-edible animal and vegetable products; all machinery, tools, dies, plates, and apparatus and materials necessary or convenient for their manufacture; medical, surgical, laboratory and sanitary supplies and equipment; all metals, minerals, mineral oils, ores, and all derivatives and manufactures thereof; paper pulp, books and all printed matter and materials necessary or convenient for their manufacture; rubber, gums, rosins, tars and waxes, their products, derivatives and substitutes, and all articles containing them; wood and wood manufactures; coffee, cocoa, tea and spices; wines, spirits, mineral waters and beverages; and all other articles of any kind whatsoever shall not, on and after the sixteenth day of February in the year One Thousand Nine Hundred and Eighteen, be exported from, or shipped from, or taken out of the United States or its territorial possessions to Abyssinia, Afghanistan, Albania, Argentina, Austria-Hungary, Belgium, her

¹ This SUPPLEMENT, October, 1917, pp. 204, 206, 210.

² *Supra*, p. 305.

colonies, possessions and protectorates, Bolivia, Brazil, Bulgaria, China, Chile, Colombia, Costa Rica, Cuba, Denmark, her colonies, possessions and protectorates, Dominican Republic, Ecuador, Egypt, France, her colonies, possessions and protectorates, Germany, her colonies, possessions and protectorates, Great Britain, her colonies, possessions and protectorates, Greece, Guatemala, Haiti, Honduras, Italy, her colonies, possessions and protectorates, Japan, Liechtenstein, Liberia, Luxembourg, Mexico, Monaco, Montenegro, Morocco, Nepal, The Netherlands, her colonies, possessions and protectorates, Nicaragua, Norway, Oman, Panama, Paraguay, Persia, Peru, Portugal, her colonies, possessions and protectorates, Roumania, Russia, Salvador, San Marino, Serbia, Siam, Spain, her colonies, possessions and protectorates, Sweden, Switzerland, Turkey, Uruguay, or Venezuela, except under license granted in accordance with regulations or orders and subject to such limitations and exceptions as have heretofore been, or shall hereafter be prescribed in pursuance of the powers conferred by said Act of June 15, 1917. The said proclamations of July 9, 1917, August 27, 1917, September 7, 1917, and November 28, 1917, and paragraph II of the executive order of October 12, 1917,¹ are hereby confirmed and continued and all rules and regulations heretofore made in connection therewith or in pursuance thereof are likewise hereby confirmed and continued and made applicable to this proclamation.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE in the District of Columbia, this 14th day of February, in the year of our Lord One Thousand Nine Hundred and [SEAL] Eighteen, and of the Independence of the United States of America the One Hundred and Forty-Second.

WOODROW WILSON.

By the President,

ROBERT LANSING

Secretary of State.

EXECUTIVE ORDER PRESCRIBING REGULATIONS RELATING TO THE EXPORTATION OF COIN, BULLION AND CURRENCY.²

September 7, 1917.

By virtue of the authority vested in me, I direct that the regulations, orders, limitations, and exceptions prescribed in relation to the exportation of coin, bullion, and currency shall be administered by and under the authority of the Secretary of the Treasury; and

¹ This SUPPLEMENT, October, 1917, p. 51.

² No. 2697.

upon the recommendation of the Secretary of the Treasury I hereby prescribe the following regulations in relation thereto:

1. Any individual, firm or corporation desiring to export from the United States or any of its territorial possessions to any foreign country named in the proclamation dated September 7th, 1917,¹ any coin, bullion, or currency, shall first file an application in triplicate with the Federal Reserve Bank of the district in which such individual, firm or corporation is located, such application to state under oath and in detail the nature of the transaction, the amount involved, the parties directly and indirectly interested and such other information as may be of assistance to the proper authorities in determining whether the exportation for which a license is desired will be compatible with the public interest.

2. Each Federal Reserve Bank shall keep a record copy of each application filed with it under the provisions of this regulation and shall forward the original application and a duplicate to the Federal Reserve Board at Washington together with such information or suggestions as it may believe proper in the circumstances and shall in addition make a formal recommendation as to whether or not in its opinion the exportation should be permitted.

3. The Federal Reserve Board, subject to the approval of the Secretary of the Treasury, is hereby authorized and empowered upon receipt of such application and the recommendation of the Federal Reserve Bank to make such ruling as it may deem proper in the circumstances and if in its opinion the exportation in question be compatible with the public interest, to permit said exportation to be made; otherwise to refuse it.

WOODROW WILSON.

THE WHITE HOUSE,
September 7, 1917.

ADMINISTRATIVE PROCEDURE ADOPTED BY THE SECRETARY OF THE
TREASURY PURSUANT TO EXECUTIVE ORDER OF OCTOBER 12TH UNDER
THE TRADING-WITH-THE-ENEMY ACT.²

November 23, 1917.

By virtue of the authority vested in the Secretary of the Treasury by Executive Order of the President, dated October 12, 1917;³ I hereby adopt the following administrative procedure deemed necessary and proper for the executive administration vested by said Executive Order in the Secretary of the Treasury; such administrative pro-

¹ This SUPPLEMENT, October, 1917, p. 210.

² Official U. S. Bulletin, November 26, 1917.

³ This SUPPLEMENT, January, 1918, p. 51.

cedure to remain in effect unless and until modified or superseded by direction of the Secretary of the Treasury:

Federal Reserve Board as Agency.

1. I hereby designate the Federal Reserve Board to act as the agency of the Secretary of the Treasury, subject to the approval of the Secretary of the Treasury, for the investigation, regulation, or prohibition of any transaction in foreign exchange, export or earmarking of gold or silver coin, or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, or between residents of one or more foreign countries by any person within the United States (provided that licenses from the War Trade Board shall also be required in respect of all such transactions with, or for account of, an enemy or ally of enemy or any person acting for, or on behalf of, or for the benefit of, an enemy or ally of enemy, and I hereby designate the War Trade Board to act as the agency of the Secretary of the Treasury to issue any such licenses); and I hereby further designate the Federal Reserve Board, acting through its duly authorized agents, to act as the agency of the Secretary of the Treasury to exercise the authority and power vested in the Secretary of the Treasury by Article 10 of said Executive Order to require any person engaged in any such transaction to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed.

Executive Order of September 7th.

The Executive Order dated September 7, 1917,¹ made under the authority of Title VII of the Act of Congress approved June 15, 1917, entitled "An act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage and better to enforce the criminal laws of the United States and for other purposes," shall remain in full force and effect, subject to the requirement of licenses of the War Trade Board in the cases hereinbefore specified, until new regulations shall have been established by the President or by the Secretary of the Treasury with the approval of the President, and thereupon shall be superseded.

2. I hereby designate the War Trade Board to act as the agency

¹ *Supra*, p. 308.

of the Secretary of the Treasury to administer the authority vested in the Secretary of the Treasury relative to the sending, taking, or transmitting, or attempting to send, take, or transmit, out of the United States—and to issue licenses under such regulations as said War Trade Board may from time to time prescribe, to send, take or transmit out of the United States—any letter, or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however,* That nothing herein shall be construed to diminish or impair either the executive administration vested in the Censorship Board or the executive administration vested in the Postmaster General by said Executive Order, dated October 12, 1917.

All applications for such licenses shall be made to the War Trade Board in the form prescribed by the War Trade Board. Such licenses shall state that the terms thereof are authorized and approved by the Secretary of the Treasury, and shall provide that the number of the license under which any such communication shall be sent shall be plainly marked upon such communication.

3. I hereby designate the Custom Division of the Treasury Department to administer, and to issue licenses (except licenses to send, take, or transmit out of the United States, any letter, writing, or tangible form of communication intended for or to be delivered, directly or indirectly, to any enemy or ally of enemy) in respect of the authority vested in the Secretary of the Treasury, under Article XI of said Executive Order, relative to sending, or taking out of, or bringing into, or attempting to send, take out of, or bring into the United States, any letter, writing, or tangible form of communication, except in the regular course of the mail.

War Risk Insurance.

4. I hereby designate the Bureau of War Risk Insurance of the Treasury Department to administer, under the direction of the Secretary of the Treasury, the authority vested in the Secretary of the Treasury, under Article XII of said Executive Order, relative to the granting of licenses or withholding or refusing the same to an enemy or ally of enemy insurance or reinsurance company doing business within the United States through an agency or branch office or otherwise.

WM. G. McADOO,
Secretary of the Treasury.

THE WHITE HOUSE,
Approved November 23, 1917.
WOODROW WILSON.

EXECUTIVE ORDER PRESCRIBING RULES AND REGULATIONS UNDER SECTION 5 OF THE TRADING-WITH-THE-ENEMY ACT AND SUPPLEMENTING RULES AND REGULATIONS HERETOFORE PRESCRIBED UNDER TITLE 7 OF THE ESPIONAGE ACT.¹

January 26, 1918.

WHEREAS, by virtue of the authority vested in me by the act approved June 15, 1917, known as the Espionage Act,² I directed by Executive order, dated September 7, 1917,³ that the regulations, orders, limitations, and exceptions prescribed by me in relation to the export of coin, bullion, and currency should be administered by the Secretary of the Treasury, and upon his recommendation prescribed certain regulations in relation thereto; and

WHEREAS, by Executive order, dated October 12, 1917,⁴ made under authority of the act aforesaid and of the act approved October 6, 1917, known as the Trading-with-the-Enemy Act, I vested in the Secretary of the Treasury the executive administration of any investigation, regulation, or prohibition of any transactions in foreign exchange, export, or earmarking of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States) and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country or between residents of one or more foreign countries by any person within the United States, and I further vested in the Secretary of the Treasury the authority and power to require any person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters, or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed; and

WHEREAS, by said Executive order, dated October 12, 1917, I authorized and directed the Secretary of the Treasury for the purpose of such executive administration to take such measures, adopt such administrative procedure, and use such agency or agencies as he may from time to time deem necessary and proper for that purpose; and

WHEREAS, the Secretary of the Treasury, with the approval of the President, by order dated November 23, 1917,⁵ adopted certain ad-

¹ No. 2796.

² This SUPPLEMENT, October, 1917, p. 178.

³ *Supra*, p. 308.

⁴ This SUPPLEMENT, January, 1918, p. 51.

⁵ *Supra*, p. 309.

ministrative procedure for the executive administration, authority and power vested in the Secretary of the Treasury by said Executive order, dated October 12, 1917, and designated the Federal Reserve Board to act as the agency of the Secretary of the Treasury, subject to the approval of the Secretary of the Treasury, to carry out such executive administration, authority and power vested in the Secretary of the Treasury as hereinbefore recited:

Now, THEREFORE, upon the recommendation of the Secretary of the Treasury, and in order to vest all necessary authority in the Federal Reserve Board to act as the agency of the Secretary of the Treasury, in the performance of the duties hereby imposed upon it, I hereby prescribe the following orders, rules, and regulations in respect of such executive administration, authority and power, and I hereby amend the regulations heretofore prescribed by said Executive order dated September 7, 1917, as herein provided.

DEFINITIONS.

Person.

The term *person* as used herein shall be deemed to mean an individual, partnership, association, company or other unincorporated body of individuals, or corporation or body politic.

Dealer.

The term *dealer* as used herein shall be deemed to mean any person engaged primarily or incidentally in the business (1) of buying, selling, or dealing in foreign exchange, or (2) of buying, selling, or dealing in securities *for* or *through* foreign correspondents, or (3) any person who carries accounts or securities *with* or *for* foreign correspondents.

Dealers of Class A.

Dealers who engage in the business of buying, selling, or dealing in foreign exchange, or of buying, selling, or dealing in securities *for* or *through* foreign correspondents, and who may or may not carry accounts or securities *with* or *for* foreign correspondents shall be known as dealers of *Class A*.

Dealers of Class B.

Dealers who carry accounts or securities *with* foreign correspondents or who buy, sell or deal in securities *through* such correspondents but who do not carry accounts or securities *for* foreign correspondents and who do not engage in the business of buying, selling,

or dealing in foreign exchange or of buying, selling, or dealing in securities *for* foreign correspondents shall be known as dealers of *Class B*.

Dealers of Class C.

Dealers who carry accounts or securities *for* foreign correspondents or who buy, sell, or deal in securities *for* such correspondents but who do not carry accounts or securities *with* foreign correspondents and who do not engage in the business of buying, selling, or dealing in foreign exchange or of buying, selling, or dealing in securities *through* foreign correspondents shall be known as dealers of *Class C*.

Foreign Exchange.

The term *foreign exchange* as used herein shall be deemed to mean checks, drafts, bills of exchange, cable transfers, or any form of negotiable or assignable instrument, or order used (a) to transfer credit or to order the payment of funds in any foreign country, or (b) to transfer credit or to order the payment of funds within the United States for foreign account.

Securities.

The term *securities* as used herein shall be deemed to mean all evidences of ownership of property not included in the foregoing definition of foreign exchange.

Correspondent.

The term *correspondent* as used herein shall be deemed to mean any person who acts as the agent of, or for, or on behalf of, or as the depository of, another person, or any person who is the principal for, or on behalf of, whom another person acts as agent.

Customer.

The term *customer* as used herein shall be deemed to mean any person other than a dealer who buys foreign exchange from a dealer or sells foreign exchange to a dealer.

TRANSACTIONS IN FOREIGN EXCHANGE AND CERTAIN OTHER TRANSACTIONS PROHIBITED EXCEPT AS HEREIN AUTHORIZED.

All transactions in foreign exchange, export or earmarking of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed

wholly within the United States) and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy, or otherwise, or between residents of one or more foreign countries, by any person within the United States, except any such transactions or transfers conducted in conformity herewith, are hereby prohibited.

TRANSACTIONS IN FOREIGN EXCHANGE OR IN SECURITIES FOR OR THROUGH
FOREIGN ACCOUNT.

Certain persons required to obtain registration certificates.

No person, other than a customer, shall, after February 10, 1918, engage in any transaction or make any transfer described in the next preceding subdivision hereof who shall not have obtained, on or before that date, a registration certificate, as hereinafter provided.

Every person who is a dealer upon the date hereof, as promptly as possible and in any event on or before January 31, 1918, shall file, with the Federal Reserve Board, through the Federal Reserve Bank of his district, an application for a registration certificate. Such application shall be in form approved by the Federal Reserve Board and shall show the character of business engaged in and whether or not an enemy or ally of enemy of the United States or any subject or citizen of an enemy or ally of enemy, wherever resident or domiciled, has any interest directly or indirectly in such business. Such application shall embody an agreement on the part of the applicant to comply with the regulations of the Federal Reserve Board, and to permit the inspection at any time of his books and accounts and to make reports as and when required on forms to be approved by the Federal Reserve Board.

The Federal Reserve Board may issue to such applicant the appropriate registration certificate in form approved by it, entitling the holder to engage in the class or classes of foreign exchange or other transactions specified in such certificate, subject to all applicable provisions of law and to such Executive orders of the President and administrative regulations as shall have been issued or may from time to time be issued by the Federal Reserve Board.

Any person who is not a dealer at the date hereof but who hereafter desires to become a dealer must first obtain a registration certificate.

Any person, other than a customer, who does not desire to become a dealer but who nevertheless desires to engage in one or several transactions or to make one or several transfers described in the next preceding subdivision hereof, may be permitted by the

Federal Reserve Board, in its discretion, to engage in any such transaction or to make any such transfer without first obtaining a registration certificate, and the Federal Reserve Board may likewise waive any requirement hereof, other than any which relates to trading with an enemy or ally of enemy, whenever it is satisfied that such waiver is not incompatible with the best interests of the United States.

Nothing herein shall be construed to abrogate or modify any existing requirement that licenses shall be obtained from the War Trade Board in respect of any transaction with, or for account of, an enemy or ally of enemy, or any person acting for, or on behalf of, or for the benefit of, an enemy or ally of enemy.

Revocation of registration certificates.

Any or all such registration certificates may be revoked at any time by direction of the Secretary of the Treasury or of the Federal Reserve Board.

Books and accounts.

Each Federal Reserve Bank through which any such registration certificate shall be issued shall furnish, to the applicant, copies of all forms of reports required and the books and records of such applicant shall thereafter be kept in a manner which will make it possible to furnish information called for in such reports without delay.

General reports.

After obtaining a registration certificate, each holder thereof shall file with the Federal Reserve Bank through which such certificate shall be issued a report, on forms to be furnished by the Federal Reserve Board, showing all accounts or securities carried *with* or *for* foreign correspondents as of the close of business on January 30, 1918, or on such other date as the Federal Reserve Board may require, and such other information as may be called for on such forms and shall thereafter file with the Federal Reserve Board, through such Federal Reserve Bank, on dates specified by the Federal Reserve Board, reports showing all changes in such accounts and all purchases, sales, and other transactions in foreign exchange or securities *for* or *through* foreign correspondents.

Customers' statements.

A dealer shall require every customer purchasing foreign exchange from him or selling foreign exchange to him, to file a statement showing the purpose of such purchase or sale, with such details as

the Federal Reserve Board may require, including a declaration to the effect that no enemy or ally of enemy of the United States has any interest directly or indirectly in such purchase or sale. The Federal Reserve Board shall prescribe the form of such declaration. Copies of such statements shall be furnished by such dealer upon request to the Federal Reserve Board, through the several Federal Reserve Banks.

Reports made through domestic correspondents.

Dealers to whom registration certificates have been issued, and who buy, sell, or deal in foreign exchange through domestic correspondents (for example, banking or other institutions located in the United States), unless otherwise directed by the Federal Reserve Board, shall arrange with such correspondents to include such transactions in the reports of such correspondents.

Such dealers will be required to report to the Federal Reserve Board only those foreign exchange transactions which are not included in the reports of such correspondents but may be called upon for any information in regard thereto desired by the Federal Reserve Board, and shall keep all books and records in a manner which will make it possible to furnish such information.

Special reports.

Whenever any holder of a registration certificate shall have reason to believe that any transaction within his knowledge involves or may involve directly or indirectly the payment of funds or delivery of securities to or the transfer of credit or securities for the benefit of an enemy or ally of enemy, or which may involve any other transaction with an enemy or ally of enemy, he shall immediately report the facts and circumstances to the Federal Reserve Board through a Federal Reserve Bank.

Filing and verification of reports.

All reports, statements, and declarations herein required, unless otherwise specified, shall be filed with the Federal Reserve Board through the Federal Reserve Banks.

Any or all such reports, statements, or declarations shall, in the discretion of the Federal Reserve Board, be verified by oath of the person making same.

Examinations.

The books and records of all dealers must at all times be open to inspection by examiners designated by the Federal Reserve Board.

DECLARATION OF FOREIGN CORRESPONDENT TO BE OBTAINED BY HOLDERS
OF REGISTRATION CERTIFICATES.

After dates to be fixed by the Federal Reserve Board in respect of each foreign country, respectively, no holder of a registration certificate shall engage in transactions *with, through, or for* any foreign correspondent in such foreign country unless he shall have obtained from such correspondent a declaration to the following effect:

Having arranged with to act as the agent or
[Holder of registration certificate]
correspondent in the United States for, or on behalf of, the undersigned, under regulations issued by the appropriate authorities of the United States Government and/or the undersigned having agreed to act as the foreign correspondent of the said I/we do hereby declare that I/we will not deal or attempt to deal, directly or indirectly, with said agent or correspondent in any transaction for or on account of, or for the benefit of, an enemy or ally of enemy of the United States, and will not make available for the use of an enemy or ally of enemy of the United States any funds or property received or credits established as a result of any transaction engaged in with or through said agent or correspondent, and will not transmit to said agent or correspondent for collection or credit any negotiable instrument bearing the signature or indorsement of an enemy or ally of enemy of the United States.

The words "enemy" and "ally of enemy" are used herein as now or hereafter defined by laws of the United States or by Proclamation of the President of the United States.

NOTE.—If foreign correspondent is incorporated this certificate must be executed by a duly authorized officer of such corporation.

SUSPENSION OF RELATIONS WITH FOREIGN CORRESPONDENTS.

If any foreign correspondent of a dealer in the United States or any person proposing to become the foreign correspondent of a dealer in the United States, shall refuse or fail to make the foregoing declaration as herein required, or if the Federal Reserve Board shall have reason to believe that any such foreign correspondent or any such person is dealing or trading with an enemy or ally of enemy of the United States, contrary to the provisions of the declaration of noninterest of enemies, herein required, or if in the judgment of the Federal Reserve Board the best interest of the United States requires such action, it may prohibit any dealer or dealers in the United States from engaging in any transaction *with, through, for, or on behalf of* such correspondent or such person.

SUSPENSION OF TRANSACTIONS.

Whenever the Federal Reserve Board shall have reason to believe that any transaction in foreign exchange or any transfer of securities

carried *with* or *for* a foreign correspondent involves or may involve trading with an enemy, or ally of enemy, or in its judgment is incompatible with the best interest of the United States, it may cause notice to be served on the parties in interest to postpone the consummation of such transaction for a period of ninety days pending investigation of the facts, and upon investigation if the Federal Reserve Board is of the opinion that the best interests of the United States require such action it may prohibit the consummation of such transaction.

The Secretary of the Treasury may likewise prohibit the consummation of any such transaction by notice served on the parties in interest (either directly or through the Federal Reserve Board) in any case in which in his judgment the best interests of the United States require such action.

SPECIAL PROVISIONS AS TO COLLECTION OF DIVIDENDS, INTEREST OR
MATURING OBLIGATIONS FOR FOREIGN ACCOUNT.

Every person presenting for collection maturing obligations, or coupons, checks or drafts issued for dividends or interest, for account of any foreign Government or person resident in any foreign country, shall make a declaration in form approved by the Federal Reserve Board, to the effect that such collections are not made for, or on behalf of, or for the benefit of, any enemy or ally of enemy; that the proceeds of such collections will not be made available for any enemy or ally of enemy; and that the maturing obligations, or the obligations and stocks upon which dividends or interest are to be paid, are not the property of any enemy or ally of enemy; have not been owned by, or held for the account of, any enemy or ally of enemy, since January 26, 1918, and were not purchased by the present owner from any enemy or ally of enemy or from any person acting for or on behalf of or for the benefit of an enemy or ally of enemy since February 3, 1917.

Provided, however, that any holder of a Class A or Class C registration certificate may collect maturing obligations and coupons, checks, or drafts issued for dividends or interest for account of a person resident in a foreign country, without making such declaration, if such holder has filed with the Federal Reserve Board a similar declaration executed by the person for whom collection is made.

Interest or dividend checks payable for foreign account.

Every person issuing checks or drafts for interest or dividends after January 26, 1918, payable to any foreign Government or to any person resident in a foreign country shall attach to or shall print on the back of such check or draft the following statement:

This check or draft will not be paid unless the following declaration is executed by the person to whom it is sent for collection by the payee, or his agent, or by the person who acts as the agent in the United States for the payee.

From actual personal knowledge, or in reliance upon declarations or affidavits furnished the undersigned by the parties in interest, I/we do hereby expressly declare that no enemy or ally of enemy of the United States is directly or indirectly interested in the proceeds of this check or draft and that such proceeds will not be made available for the use of an enemy or ally of enemy of the United States; that the stock upon which this dividend is paid (or the obligation upon which this interest is paid) is not and has not been owned by or held for account of an enemy or ally of enemy of the United States since January 26, 1918, and has not been purchased by the present owner from an enemy or ally of enemy or from a person acting for or on behalf of or for the benefit of an enemy or ally of enemy since February 3, 1917.

DEALINGS IN SECURITIES FOR OR THROUGH FOREIGN ACCOUNT.

No person shall purchase, sell, or deliver any securities for account of any foreign government, or for account of any person resident in a foreign country, unless such government or such person, as the case may be, shall have made a declaration, in form approved by the Federal Reserve Board, similar in effect to that required in the case of the collection of maturing obligations, for account of a foreign government or person resident in a foreign country.

PROCEDURE WHERE DECLARATION OF NONINTEREST OF ENEMY OR ALLY OF ENEMY CANNOT BE MADE.

Any person who is unable to make a declaration of noninterest of enemy or ally of enemy required hereunder may apply to the Federal Reserve Board for a waiver of such declaration, submitting to such board all facts and circumstances relating to the transaction involved which are in the possession of the applicant. If upon investigation the Federal Reserve Board shall determine that there is no reason to believe that any enemy or ally of enemy is directly or indirectly interested in the transaction involved, and that its consummation will not be incompatible with the best interests of the United States, it may permit the transaction to be consummated without the declaration herein required. If the Federal Reserve Board shall have reason to believe that an enemy or ally of enemy is or may be directly or indirectly interested in the transaction, it shall transmit to the War Trade Board all records in the case for such action as that board may determine to be necessary.

EXPORT AND EARMARKING OF COIN, BULLION, OR CURRENCY.

The following regulations prescribed by Executive order, dated September 7, 1917, shall continue in force as herein amended.

Any person desiring to export from the United States or any of its territorial possessions to any foreign country named in the procla-

mation dated September 7, 1917,¹ any coin, bullion, or currency, shall first file an application in triplicate with the Federal Reserve Bank of the district in which such person is located for a special or general license. Applications filed must contain statements under oath and showing in detail the nature of the transaction, the amount involved, the parties directly and indirectly interested, and such other information as may be of assistance to the proper authorities in determining whether the exportation for which a license is desired will be compatible with the public interest. All such applications should be made on the standard form prescribed by the Federal Reserve Board.

Each Federal Reserve Bank shall keep a record copy of each application filed with it under the provisions of this regulation and shall forward the original application and a duplicate to the Federal Reserve Board at Washington, together with such information or suggestions as it may believe proper in the circumstances, and shall in addition make a formal recommendation as to whether or not, in its opinion, the exportation should be permitted.

The Federal Reserve Board, subject to the approval of the Secretary of the Treasury, is hereby authorized and empowered, upon receipt of such application and the recommendation of the Federal Reserve Bank, to make such ruling as it may deem proper in the circumstances; and if, in its opinion, the exportation in question be compatible with the public interest, to permit said exportation to be made; otherwise to refuse it.

No gold or silver coin, or bullion, or currency shall be set aside and earmarked for safekeeping for any person without the written approval of the Federal Reserve Board.

LICENSES FROM WAR TRADE BOARD IN TRANSACTIONS INVOLVING TRADING
WITH AN ENEMY OR ALLY OF ENEMY.

Applications to the Federal Reserve Board for permission to export or earmark gold or silver coin or bullion or currency shall be accompanied by a certified copy of a license issued by the War Trade Board, whenever any such transactions involve or may involve trading directly or indirectly with an enemy or ally of enemy or with any person acting for, or on behalf of, or for the benefit of, an enemy or ally of enemy.

APPLICATIONS FOR REGISTRATION CERTIFICATES AND EXPORT LICENSES,
PROVIDED FOR HEREUNDER, BY PERSONS RESIDING IN ANY DEPENDENCY
OF THE UNITED STATES.

Applications to the Federal Reserve Board either for registration certificates or for licenses to export coin, bullion or currency may be

¹ This SUPPLEMENT, October, 1917, p. 210.

made by persons residing in any dependency of the United States (including the Philippine Islands, Alaska, Guam, Hawaii, Porto Rico, Virgin Islands, and Canal Zone) through such agency located in any such dependency as may be hereafter designated by the Federal Reserve Board, instead of through a Federal Reserve Bank; but until an agency has been so designated in any such dependency, persons residing therein may make such applications through any Federal Reserve Bank. The Federal Reserve Board may from time to time postpone, in respect of any one or more of such dependencies, the date on and after which persons residing therein shall be prohibited from engaging in any of the transactions or making any transfer hereinbefore prohibited without having obtained registration certificates, in case such registration certificates can not be obtained on or before the date hereinbefore specified.

WOODROW WILSON.

THE WHITE HOUSE,
26 January, 1918.

PROCLAMATION PROHIBITING CERTAIN IMPORTS EXCEPT UNDER LICENSE.¹

November 28, 1917.

WHEREAS Congress has enacted, and the President has on the Sixth day of October, 1917, approved, a law² which contains the following provisions:

Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: Provided, however, that no preference shall be given to the ports of one State over those of another.

NOW, THEREFORE, I, WOODROW WILSON, PRESIDENT OF THE UNITED STATES OF AMERICA, DO HEREBY PROCLAIM to all whom it may concern that the public safety requires that the following articles, namely: antimony, antimony ore, or any chemical extracted therefrom; asbestos; beans of all kinds; balata; burlap; castor seed, castor oil; cotton; chrome, chrome ore, or any ferro-alloy or chemical extracted therefrom; coconut oil; cobalt, cobalt ore, or any ferro-alloy or chemical extracted therefrom; copra; industrial diamonds; all ferro-alloys; flax; gutta joolatong; gutta percha; gutta siak; hemp; hides and skins; jute; iridium; leather; manganese, manganese ore, or any ferro-alloy or chemical extracted therefrom; mica, molybdenum,

¹ No. 1411.

² This SUPPLEMENT, January, 1918, p. 27.

molybdenum ore, or any ferro-alloy or chemical extracted therefrom; naxos emery and naxos emery ore; nickel, nickel ore, matte, or any ferro-alloy or chemical extracted therefrom; sodium, potassium, or calcium nitrates; optical glass; palm oil; platinum; plumbago; pyrites; rice; rubber, raw, reclaimed, waste or scrap; scheelite; shellac; sisal; soya bean oil; spiegeleisen; sugars; tanning materials; tin in bars, blocks, pigs, or grain or granulated; tin ore and tin concentrates, or any chemical extracted therefrom; titanium, titanium ore, or any ferro-alloy or chemical extracted therefrom; tobacco; tungsten, tungsten ore, or any ferro-alloy or chemical extracted therefrom; vanadium, vanadium ore, or any ferro-alloy or chemical extracted therefrom; wheat and wheat flour; wolframite; or wool, shall not, from and after the date of this proclamation, be imported into the United States or its territorial possessions from Abyssinia, Afghanistan, Albania, Argentina, Austria-Hungary, Belgium, her colonies, possessions and protectorates, Bolivia, Brazil, Bulgaria, China, Chile, Colombia, Costa Rica, Cuba, Denmark, her colonies, possessions and protectorates, Dominican Republic, Ecuador, Egypt, France, her colonies, possessions and protectorates, Germany, her colonies, possessions and protectorates, Great Britain, her colonies, possessions and protectorates, Greece, Guatemala, Haiti, Honduras, Italy, her colonies, possessions and protectorates, Japan, Liechtenstein, Liberia, Luxembourg, Mexico, Monaco, Montenegro, Morocco, Nepal, The Netherlands, her colonies, possessions and protectorates, Nicaragua, Norway, Oman, Panama, Paraguay, Persia, Peru, Portugal, her colonies, possessions and protectorates, Roumania, Russia, Salvador, San Marino, Serbia, Siam, Spain, her colonies, possessions and protectorates, Sweden, Switzerland, Turkey, Uruguay, or Venezuela, except under license granted by the War Trade Board in accordance with regulations or orders and subject to such limitations and exceptions as have heretofore been made or shall hereafter be prescribed in pursuance of the powers conferred by said Act of October 6, 1917, and the Executive Order of October 12, 1917.¹

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE in the District of Columbia, this 28th day of November
in the year of our Lord One Thousand Nine Hundred and
[SEAL] Seventeen and of the Independence of the United States
of America the One Hundred and Forty-second.

WOODROW WILSON.

By the President,
ROBERT LANSING
Secretary of State.

¹ This SUPPLEMENT, January, 1918, p. 51.

PROCLAMATION RELATING TO IMPORTS IN TIME OF WAR.¹*February 14, 1918.*

WHEREAS Congress has enacted, and the President has on the Sixth day of October, 1917, approved, a law² which contains the following provisions:

Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: Provided, however, that no preference shall be given to the ports of one State over those of another.

And whereas the President has heretofore by proclamation dated November 28, 1917,³ declared certain imports in time of war unlawful, and the President now finds that the public safety requires that such proclamation be amended and supplemented in respect to the articles and countries hereinafter mentioned;

NOW, THEREFORE, I, WOODROW WILSON, PRESIDENT OF THE UNITED STATES OF AMERICA, DO HEREBY PROCLAIM to all whom it may concern that the public safety requires that the following articles, namely: all kinds of arms, guns, ammunition and explosives, machines for their manufacture or repair, component parts thereof, materials or ingredients used in their manufacture, and all articles necessary or convenient for their use; all contrivances for or means of transportation on land or in the water or air, machines used in their manufacture or repair, component parts thereof, materials or ingredients used in their manufacture, and all instruments, articles and animals necessary or convenient for their use; all means of communication, tools, implements, instruments, equipment, maps, pictures, papers and other articles, machines and documents necessary or convenient for carrying on hostile operations; all kinds of fuel, food, foodstuffs, feed, forage and clothing, and all articles and materials used in their manufacture; all chemicals, drugs, dyestuffs and tanning materials; cotton, wool, silk, flax, hemp, jute, sisal and other fibers and manufactures thereof; all earthen, clay, glass, sand, stone, and their products; animals of every kind, their products and derivatives; hides, skins and manufactures thereof; all non-edible animal and vegetable products; all machinery, tools, dies, plates, and apparatus, and ma-

¹ No. 1429.

² This SUPPLEMENT, January, 1918, p. 27.

³ *Supra*, p. 322.

terials necessary or convenient for their manufacture; medical, surgical, laboratory and sanitary supplies and equipment; all metals, minerals, mineral oils, ores, and all derivatives and manufactures thereof; paper pulp, books and all printed matter, and materials necessary and convenient for their manufacture; rubber, gums, rosins, tars and waxes, their products, derivatives and substitutes, and all articles containing them; wood and wood manufactures; coffee, cocoa, tea and spices; wines, spirits, mineral waters and beverages; and all other articles of any kind whatsoever, shall not, on and after the sixteenth day of February, in the year One Thousand Nine Hundred and Eighteen, be imported into the United States or its territorial possessions from Abyssinia, Afghanistan, Albania, Argentina, Austria-Hungary, Belgium, her colonies, possessions and protectorates, Bolivia, Brazil, Bulgaria, China, Chile, Colombia, Costa Rica, Cuba, Denmark, her colonies, possessions and protectorates, Dominican Republic, Ecuador, Egypt, France, her colonies, possessions and protectorates, Germany, her colonies, possessions and protectorates, Great Britain, her colonies, possessions and protectorates, Greece, Guatemala, Haiti, Honduras, Italy, her colonies, possessions and protectorates, Japan, Liechtenstein, Liberia, Luxembourg, Mexico, Monaco, Montenegro, Morocco, Nepal, The Netherlands, her colonies, possessions and protectorates, Nicaragua, Norway, Oman, Panama, Paraguay, Persia, Peru, Portugal, her colonies, possessions and protectorates, Roumania, Russia, Salvador, San Marino, Serbia, Siam, Spain, her colonies, possessions and protectorates, Sweden, Switzerland, Turkey, Uruguay, or Venezuela, except under license granted in accordance with regulations or orders and subject to such limitations and exceptions as have heretofore been, or shall hereafter be prescribed in pursuance of the powers conferred by said Act of October 6, 1917. The said proclamation of November 28, 1917, and paragraph III of the executive order of October 12, 1917,¹ are hereby confirmed and continued and all rules and regulations heretofore made in connection therewith or in pursuance thereof are likewise hereby confirmed and continued and made applicable to this proclamation.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE in the District of Columbia, this 14th day of February in the year of our Lord One Thousand Nine Hundred [SEAL.] and Eighteen and of the Independence of the United States of America the One Hundred and Forty-Second.

WOODROW WILSON.

By the President,
ROBERT LANSING
Secretary of State.

¹ This SUPPLEMENT, January, 1918, p. 51.

EXECUTIVE ORDER AMENDING PARAGRAPH 20 OF THE NAVIGATION RULES
AND REGULATIONS OF THE PANAMA CANAL.¹

July 26, 1918.

By virtue of the authority vested in me, I hereby establish the following Executive Order for the Canal Zone:

Section 1. Paragraph 20 of the Executive Order of July 9, 1914,² entitled "Rules and Regulations for the Operation and Navigation of The Panama Canal and approaches thereto, including all waters under its jurisdiction," is hereby amended to read as follows:

"20. The captain or master of a vessel in Canal waters, except while the vessel is being passed through the locks, shall be charged with the safe handling and proper navigation of the vessel; the pilot is to be considered as being on board solely in an advisory capacity, but masters of vessels must abide by rules and regulations of the Canal as interpreted by the pilot. No claim against The Panama Canal for damages on account of injury to a vessel or its cargo while in Canal Zone waters, arising from the operation of the Canal (other than the passing of vessels through the locks) shall be allowed unless it shall be determined by the Governor of The Panama Canal that such injury was due to the negligence or want of care on the part of agents or employees of The Panama Canal, and there shall be an appropriation available for the payment of such claim."

Section 2. This order shall take effect from and after this date.

WOODROW WILSON.

THE WHITE HOUSE,

26 July, 1918.

AN ACT TO PREVENT IN TIME OF WAR DEPARTURE FROM OR ENTRY INTO
THE UNITED STATES CONTRARY TO THE PUBLIC SAFETY.³

Approved May 22, 1918.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall

¹ No. 2926.

² This SUPPLEMENT, January, 1916, p. 27.

³ Public—No. 154—65th Congress.

make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—

(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;

(b) For any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this Act;

(c) For any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(d) For any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(e) For any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(f) For any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(g) For any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

SEC. 2. That after such proclamation as is provided for by the preceding section has been made and published and while said proclamation is in force, it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter or attempt to depart from or enter the United States unless he bears a valid passport.

SEC. 3. That any person who shall wilfully violate any of the provisions of this Act, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than twenty years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both; and any vehicle or any vessel, together with its or her appurtenances, equipment, tackle, apparel, and

furniture, concerned in any such violation, shall be forfeited to the United States.

SEC. 4. That the term "United States" as used in this Act includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

The word "person" as used herein shall be deemed to mean any individual, partnership, association, company, or other unincorporated body of individuals, or corporation, or body politic.

PROCLAMATION RELATING TO THE ISSUANCE OF PASSPORTS AND THE GRANTING OF PERMITS TO DEPART FROM AND ENTER THE UNITED STATES.¹

August 8, 1918.

WHEREAS by Act of Congress approved the twenty-second day of May, one thousand nine hundred and eighteen, entitled "An Act to Prevent in Time of War Departure From and Entry Into the United States Contrary to the Public Safety," it is provided as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when the United States is at war, if the President shall find that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by this Act be imposed upon the departure of persons from and their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful—

(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;

(b) For any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this Act;

(c) For any person knowingly to make any false statement in an application for permission to depart from or enter the United States with intent to induce or secure the granting of such permission either for himself or for another;

(d) For any person knowingly to furnish or attempt to furnish or assist in furnishing to another a permit or evidence of permission to depart or enter not issued and designed for such other person's use;

(e) For any person knowingly to use or attempt to use any permit or evidence of permission to depart or enter not issued and designed for his use;

(f) For any person to forge, counterfeit, mutilate, or alter, or cause or procure to be forged, counterfeited, mutilated, or altered, any permit or evidence of permission to depart from or enter the United States;

(g) For any person knowingly to use or attempt to use or furnish to another for use any false, forged, counterfeited, mutilated, or altered permit, or evidence of permission, or any permit or evidence of permission which, though originally valid, has become or been made void or invalid.

Sec. 2. That after such proclamation as is provided for by the preceding

¹ No. 1473.

section has been made and published and while said proclamation is in force, it shall, except as otherwise provided by the President, and subject to such limitations and exceptions as the President may authorize and prescribe, be unlawful for any citizen of the United States to depart from or enter or attempt to depart from or enter the United States unless he bears a valid passport.

Sec. 3. That any person who shall wilfully violate any of the provisions of this Act, or of any order or proclamation of the President promulgated, or of any permit, rule, or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than twenty years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by like fine or imprisonment, or both; and any vehicle or any vessel, together with its or her appurtenances, equipment, tackle, apparel, and furniture, concerned in any such violation, shall be forfeited to the United States.

Sec. 4. That the term "United States" as used in this Act includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

The word "person" as used herein shall be deemed to mean any individual, partnership, association, company, or other unincorporated body of individuals, or corporation, or body politic.

AND WHEREAS other provisions relating to departure from and entry into the United States are contained in Section 3, sub-section (b), of the Trading with the Enemy Act, approved October 6, 1917,¹ and in Section four thousand and sixty-seven of the Revised Statutes, as amended by the Act of April 16, 1918,² and Sections four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy of the Revised Statutes, and in the regulations prescribed in the President's Proclamations of April 6, 1917,³ November 16, 1917,⁴ December 11, 1917,⁴ and April 19, 1918;⁵

AND WHEREAS the Act of May 20, 1918, authorizes me to coordinate and consolidate executive agencies and bureaus in the interest of economy and more efficient concentration of the Government;

NOW, THEREFORE, I, Woodrow Wilson, President of the United States of America, acting under and by virtue of the aforesaid authority vested in me, do hereby find and publicly proclaim and declare that the public safety requires that restrictions and prohibitions in addition to those provided otherwise than by the Act of May 22, 1918, above mentioned, shall be imposed upon the departure of persons from and their entry into the United States; and I make the following orders thereunder:

1. No citizen of the United States shall receive a passport entitling him to leave or enter the United States, unless it shall affirmatively appear that there are adequate reasons for such departure or entry and that such departure or entry is not prejudicial to the interests of the United States.

¹ This SUPPLEMENT, January, 1918, p. 27.

² *Supra*, p. 274.

³ This SUPPLEMENT, July, 1917, p. 152.

⁴ *Ibid.*, January, 1918, pp. 4 and 9.

⁵ *Supra*, p. 275.

2. No alien shall receive permission to depart from or enter the United States unless it shall affirmatively appear that there is reasonable necessity for such departure or entry and that such departure or entry is not prejudicial to the interests of the United States.

3. The provisions of this proclamation and the rules and regulations promulgated in pursuance hereof, shall not be held to suspend or supersede in any respect, except as herein expressly provided, the President's Proclamations of April 6, 1917, November 16, 1917, December 11, 1917, and April 19, 1918, above referred to; nor shall anything contained herein be construed to suspend or supersede any rules or regulations issued under the Chinese Exclusion law or the immigration laws except as herein expressly provided; but the provisions hereof shall, subject to the provisos above mentioned, be regarded as additional to such rules and regulations. Compliance with this Proclamation and the rules and regulations promulgated in pursuance hereof shall not exempt any individual from the duty of complying with any statute, proclamation, order, rule, or regulations not referred to herein.

4. I hereby designate the Secretary of State as the official who shall grant, or in whose name shall be granted, permission to aliens to depart from or enter the United States; I reaffirm sections 25, 26, and 27 of the Executive Order of October 12, 1917,¹ vesting in the Secretary of State the administration of the provisions of Section 3, sub-section (b), of the Trading with the Enemy Act; I transfer to the Secretary of State the executive administration of Regulations 9 and 10 of the President's Proclamation of April 6, 1917, of Regulation 15 of the President's Proclamation of November 16, 1917, and of Regulations 1 and 2 of the President's Proclamation of December 11, 1917, and the executive administration of the aforesaid regulations as extended by the President's Proclamation of April 19, 1918, said executive administration heretofore having been delegated to the Attorney General under dates of April 6, 1917, November 16, 1917, December 11, 1917, and April 19, 1918. The Rules and Regulations made by the Secretary of the Treasury as authorized by Title II, Section 1, of the Espionage Act approved June 15, 1917,² and by the Proclamation of December 3, 1917,³ shall be superseded by this Proclamation and the rules and regulations promulgated in pursuance hereof in so far as they are inconsistent therewith.

I hereby direct all departments of the government to cooperate with the Secretary of State in the execution of his duties under this Proclamation and the rules and regulations promulgated in pursuance hereof. They shall upon his request make available to him for that purpose the services of their respective officials and agents. The

¹ This SUPPLEMENT, January, 1918, p. 51.

² *Ibid.*, October, 1917, p. 178.

³ No. 1413.

Secretary of the Treasury, the Secretary of War, the Attorney General, the Secretary of the Navy, the Secretary of Commerce, and the Secretary of Labor shall, at the request of the Secretary of State, each appoint a representative to render to the Secretary of State, or his representative, such assistance and advice as he may desire respecting the administration of this Proclamation and of the rules and regulations aforesaid.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed:

DONE in the District of Columbia, this 8th day of August in the year of our Lord one thousand nine hundred and [SEAL] eighteen, and of the Independence of the United States the one hundred and forty-third.

WOODROW WILSON.

By the President;

ROBERT LANSING

Secretary of State.

EXECUTIVE ORDER PRESCRIBING RULES AND REGULATIONS GOVERNING THE
ISSUANCE OF PERMITS TO ENTER AND LEAVE THE UNITED STATES.¹

August 8, 1918.

Supplemental to the Presidential Proclamation of August 8, 1918,² and by virtue of the authority set forth therein, I hereby prescribe the following rules and regulations governing departure from and entry into the United States.

Section 1.

The present system of controlling entry into and departure from the United States by alien enemies and other persons, as administered by the Department of State, the Department of the Treasury, the Department of Justice, the Department of Commerce, and the Department of Labor, is hereby confirmed and established by virtue of the authority vested in me as aforesaid and shall continue in full force and effect in the continental United States as defined herein until six o'clock in the forenoon of September 15, 1918, and in the outlying possessions of the United States until such time or times as the Secretary of State shall designate; when the following rules and regulations shall become operative and shall supersede all rules, regulations, and orders of the present system inconsistent with them; but the Secretary of State may direct at any time subsequent to the date hereof that seamen be kept on their vessels. (See Section 10 (c), *infra*.) The Secretary of State is hereby authorized, in his dis-

¹ No. 2932.

² *Supra*, p. 328.

cretion, to prescribe exceptions to these rules and regulations governing the entry into and departure from the United States of citizens and subjects of the nations associated with the United States in the prosecution of the war.

TITLE 1.

Definitions.

Section 2.

The term "United States" as defined in the Act of May 22, 1918, and as used herein includes the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States.

Section 3.

The term "continental United States" as used herein includes the territory of the several States of the United States and Alaska.

Section 4.

The term "departure from the United States" as used herein includes, in addition to any entry whatever upon foreign territory or waters, any trip or journey on or over (1) the Great Lakes or their connecting waters, (2) any rivers or other waters coinciding with or covering the boundary of the United States, or (3) tidal waters beyond the shore line of the United States, said shore line being hereby defined as the line of sea coast and the shores of all waters of the United States and its territorial possessions connected with the high seas and navigable by ocean going vessels. Provided, however, that no trip or journey upon a public ferry having both termini in the United States and not touching foreign territory or waters shall be deemed a departure from the United States.

Section 5.

The term "passport" as used herein includes any document in the nature of a passport issued by the United States or by a foreign government, which shows the identity and nationality of the individual for whose use it was issued and bears his signed and certified photograph.

Section 6.

The granting of a "permit" or "permission" to leave or enter the United States, as the terms are used herein, shall be construed to include the granting of a license under Section 3 (b) of the "Trading with the Enemy Act" whenever such license is essential to the lawful transportation of the person to whom the permit is granted. Wherever it is provided explicitly or by implication that any person may depart from or enter the United States without a permit or permission under these regulations, such provision of itself shall be construed as a license under said Section 3 (b) authorizing the transportation of such persons within the limits covered by the provision.

Section 7.

The term "seaman" as used herein includes, in addition to the persons ordinarily described thereby, sea-going fishermen and all owners, masters, officers, and members of crews and other persons employed on vessels which for purposes of business or pleasure cruise on tidal waters beyond the shore line or on the Great Lakes.

Section 8.

The term "hostile aliens" includes—

- (a) All persons who are alien enemies as now or hereafter defined by statute; or by proclamation of the President; and
- (b) All subjects or citizens of enemy or ally of enemy nations.

TITLE 2.

*Limitations upon and Exceptions to the Application of the Act of May 22, 1918.**Section 9.*

The following general limitations upon and exceptions to the application of the Act of May 22, 1918, are authorized and prescribed:

(a) No passports or permits to depart from or enter the United States shall be required of persons *other than hostile aliens* travelling between ports of the continental United States on vessels making no intermediate calls at foreign or non-continental ports. *Hostile aliens must obtain permits for all departures from, and entries into, the United States.*

(b) No passports or permits to depart from or enter the United States shall be required of persons *other than hostile aliens* travelling between points in the continental United States and points in Canada or Bermuda, or passing through Canada on a trip between two points in the continental United States, except as provided and required by Title 3 of these regulations. This exception is not applicable to persons going from the continental United States via Canada to other places outside of the continental United States. Persons *other than hostile aliens* starting from Newfoundland for the United States shall not be required to obtain visas or verifications from the American Consul in Newfoundland. (As to hostile aliens, see 9 (a), *supra*.)

(c) No passports or permits to depart from or enter the United States shall be required of persons in or attached to the military or naval forces of the United States or of any nation associated with the United States in the prosecution of the war, provided that such persons when in or attached to the military or naval forces of a nation so associated with the United States shall be identified and vouched for to the Secretary of State by a duly authorized representative of such nation; and provided further that when persons in or attached to such military or naval forces travel separately or otherwise than in regular commands they shall bear certificates issued by the War or

Navy Department of the United States or by a duly authorized representative of an associated nation, adequately establishing the identity of the bearers and their connection with the military or naval forces aforesaid. Nothing herein shall be construed to prevent a citizen of the United States, if a member of or attached to the military or naval forces of any country, from entering or leaving the United States provided he bears a valid passport in lieu of the certificate of identification above described. All such departures shall, however, be subject to the requirements of Title 3 of these regulations. The limitations and exceptions aforesaid are subject to the provisions of Section 38 hereof.

Section 10.

The following limitations upon and exceptions to the application of Section 1, subsection (a) of the Act of May 22, 1918, are prescribed:

(a) Aliens need not present permits in the usual form for travel across the Mexican border provided that they bear valid permits to cross and recross the border at specified points issued by an immigrant inspector. In applying for these border permits they shall fill out such forms, furnish such photographs, and answer such inquiries as the immigrant inspector shall require. The special permits so issued shall be valid for travel across the Mexican border for such limited period and for passage across the border at such specifically defined points as the issuing inspectors shall note on the permits. Except as otherwise provided by the Secretary of State, such permits shall be issued only to persons residing within ten miles of the border and shall be valid for travel only to points not more than ten miles beyond the border. Aliens entering Mexico with border permits must have such permits visaed by a diplomatic or consular representative of the United States in Mexico before returning to the United States unless the Secretary of State shall otherwise provide. Hostile aliens shall not be given permits to cross the Mexican border without special authorization from the Secretary of State.

(b) Hostile aliens residing in Canada or the United States may secure special permits allowing them to cross the border between the two countries by making application therefor to the representative of the Bureau of Immigration of the Department of Labor stationed nearest their place of residence. In applying for such permits they shall fill out such forms, furnish such photographs and answer such inquiries as the official receiving the application shall require. The special permits so issued shall be valid for such limited period, for passage across the border at such specifically defined points, and for such number of crossings as the issuing officials shall note on the permits.

(c) Aliens who are seamen on vessels arriving at ports of the United States and who desire to land in the country shall apply to

an immigrant inspector. They shall submit to such immigrant inspector satisfactory evidence of their nationality and furnish such photographs and execute such forms and applications as the immigrant inspector shall require. The immigrant inspector may thereupon issue identity cards authorizing such seamen to land in the United States, unless the Secretary of State directs that they be kept on their vessels.

(d) Alien seamen desiring to sail from the United States shall submit satisfactory evidence of nationality to the United States customs inspectors stationed at the port of departure. If such applicants have landed in the United States since the date on which these regulations became effective at their port of arrival they shall further submit the identity cards issued by the immigrant inspector permitting them to land in the country. Said identity cards shall be stamped by the customs officials, if permission is given the applicants to depart, and such cards so stamped shall be the evidence of such permission. In case an applicant for permission to sail under this paragraph has not entered the United States since these regulations became effective, he shall apply to a collector of customs for an identity card and permission to sail. In making such application he shall submit satisfactory evidence of his nationality and furnish such photographs and execute such forms and applications as the collector of customs shall require.

(e) Identity cards issued to alien seamen as provided by the foregoing paragraphs (c) and (d) shall be retained by the seamen to whom they are issued and used by the holders from time to time as they land in and sail from the United States. An alien seaman bearing such card shall have the same validated for landing or sailing by the immigration or customs authorities respectively on each occasion when he applies for permission to land at or sail from a United States port.

(f) Aliens passing through the United States en route between two foreign points and not remaining in the United States more than thirty days shall make application for permission to depart through the immigration official acting as control officer at the point where they enter the United States. Such permission, if granted, will be given by the official acting as control officer at the designated point of departure. Nothing herein shall be construed as requiring a permit for departure from a transient alien in case such permit would not have been necessary if the journey to his final destination had commenced in the United States. A transient will be required to depart from the United States at the earliest date practicable. He shall submit to the immigrant inspector his itinerary to the port of departure, which shall be by the most direct route reasonably available, and upon obtaining approval of the same, he shall proceed immediately to the port of departure. Upon arrival at said port, he

shall report forthwith to the customs officers. For all deviations and delays special permission must be obtained from the Secretary of State.

(g) No permits to depart from or enter the United States shall be required of officials or representatives of foreign countries duly accredited to the United States or a friendly country provided that such persons bear valid passports and provided further that the Department of State is notified in advance of their intended entry or departure and consents thereto. Such officials, however, when desiring to enter the United States shall have their passports visaed by a diplomatic or consular officer of the United States in the country from which they come and in the country from which they embark for or enter the United States; and such officials desiring to depart from the United States shall have their passports visaed by the Department of State.

Nothing in the foregoing paragraphs (a) to (g) inclusive shall be construed to prevent the entry or departure of an alien at the Mexican or Canadian border, of an alien seaman at a United States port, or of a transient alien at any point, provided he bears a valid permit for such entry or departure issued in accordance with Title 6 or Title 7 hereof.

Section 11.

The following limitations upon and exceptions to the application of Section 2 of the Act of May 22, 1918, are authorized and prescribed:

(a) Citizens of the United States travelling between United States ports not within the continental United States, or between such ports and ports within the continental United States, on vessels making no intermediate calls at foreign ports other than those of Canada, or Bermuda, shall not be required to bear passports provided that they have received from the immigrant inspector at the port of departure United States citizens' identity cards. Applicants for such cards shall supply such photographs and execute such forms and applications as the immigrant inspectors require. When applications for such cards are made in dependencies of the United States where no immigrant inspectors are stationed they shall be made to the Governors of such dependencies or their representatives duly appointed for the purpose: provided that employees of the Panama Canal and the Panama Railroad Company and members of their families, civilian employees of the United States and members of their families, and the families of members of the Army and Navy, travelling between the continental United States and the Panama Canal Zone, may carry identity certificates issued by The Panama Canal in lieu of passports or identity cards issued by immigration officials.

(b) Citizens of the United States travelling across the Mexican

border shall not be required, unless otherwise ordered by the Secretary of State, to bear passports provided that they have received citizens' identity cards from immigrant inspectors at the points where they depart from or enter the United States. Such identity cards shall be applied for in accordance with the preceding paragraph (a). Except as otherwise provided by the Secretary of State, such identity cards shall be issued only to persons residing within ten miles of the border and shall be valid for travel to points not more than ten miles beyond the border. Citizens entering Mexico without passports and with identity cards must have such cards verified by a diplomatic or consular representative of the United States in Mexico before returning to the United States, unless the Secretary of State shall otherwise provide.

(c) Citizens of the United States who are seamen upon vessels entering or leaving ports of the United States shall not be required to bear passports provided that they bear seamen's certificates of American citizenship issued by collectors of the ports of the United States as provided for in Section 4588 of the Revised Statutes. Citizens applying for such certificates shall supply such photographs and execute such forms and applications as the collectors shall require. No identity card other than a passport or a seaman's certificate shall be issued to a seaman who is a citizen of the United States.

Nothing in the foregoing paragraphs (a), (b), and (c) shall be construed to prevent the use of a valid passport by any seaman or other citizen referred to in said paragraphs in lieu of a seaman's certificate or identity card as described therein.

TITLE 3.

General Regulations.

Persons Liable to Military Service.

Section 12.

No person registered or enrolled or subject to registry or enrollment for military service in the United States shall depart from the United States without the previous consent of the Secretary of War or such person or persons as he may appoint to give such consent. The Secretary of State shall issue no passport or permit entitling such person to depart without securing satisfactory evidence of such consent. Reference should be had to Section 156, Selective Service Regulations, and amendments thereto.

TITLE 4.

*American citizens: Departure and Entry.**Section 13.*

Issue of Passports.

The "Rules Governing the Granting and Issuing of Passports in the United States" as established on January 24, 1917, are continued in force without change.

Section 14.

Verification of Passports in Foreign Countries.

Passports are not valid for return to the United States unless verified in the country from which the holder starts on his journey to the United States and further verified in the foreign country from which he embarks for or enters the United States. No fee shall be collected by diplomatic or consular officers of the United States for or in connection with such verification.

ALIENS' PERMITS TO DEPART AND ENTER.

TITLE 5.

*Permit Agents.**Section 15.*

The officials designated in the appendix hereto are hereby appointed Permit Agents for the purpose of receiving from aliens applications for permits to depart from the United States. No Permit Agents have been designated in Tutuila, Manua, Guam, or Wake Island, as it is believed that travel from these points will not necessitate such appointments. For the time being persons desiring to leave any of these insular possessions may do so without securing permission hereunder.

Section 16.

Representatives of the Bureau of Immigration of the Department of Labor, stationed in Canada or on the Canadian border, and all diplomatic and consular officers of the United States in foreign countries are hereby appointed Permit Agents for the purpose of receiving from aliens applications for permits to enter the United States.

Section 17.

The Secretary of State is authorized to designate and appoint additional Permit Agents from time to time as he may deem advisable, and to revoke their appointments or the appointments of any Permit Agent aforementioned. All Permit Agents hereby or hereafter appointed are hereby authorized to administer any oath or

affirmation required in these rules and regulations or in any amendment hereof or addition hereto. All persons empowered to issue special permits referred to in sections 10 and 11 hereof are hereby authorized to administer to applicants any oaths or affirmations deemed necessary in connection with their applications.

TITLE 6.

Permits to Depart.

Section 18.

Except in cases for which special regulations are hereinbefore provided, any alien desiring to depart from the United States shall apply for a permit to the Permit Agent located nearest to the last residence of the applicant. Any Permit Agent is authorized to receive an application to depart if it appears that the applicant would be caused unreasonable hardship or delay if required to apply to the Permit Agent nearest his last residence.

Section 19.

Each applicant shall submit to the Permit Agent, for transmission to Washington if required, a passport issued for his use by the Government to which he owes allegiance or by a duly authorized diplomatic or consular officer thereof, or of the country representing in the United States the interests of his country. Such passports must have been issued, renewed or visaed by a duly authorized representative of said Government, or of the country representing its interests in the United States, within ten days prior to the time of the application. Aliens who by reason of doubtful nationality, lack of nationality, or any other cause, are unable to secure passports may be granted permission to depart in the discretion of the Secretary of State.

Section 20.

If the application is made to a Permit Agent located east of the Mississippi River, the application shall be made at least fourteen and not more than twenty-eight days before the date set for departure. If the Permit Agent is located west of the Mississippi River, the application shall be made at least eighteen days and not more than twenty-eight days before the date set for departure. In special cases additional time will be required for adequate investigation.

Section 21.

Applications for permission to depart from the United States shall be made upon forms provided for the purpose by the Permit Agents and shall be executed by applicants according to the instructions printed thereon. Substantial copies of such forms and instructions are contained in the Appendix to these regulations.

Section 22.

Applications shall be executed in triplicate. All copies shall be

personally signed and sworn to by the applicant before the Permit Agent. The Permit Agent shall fill in the name of the applicant on the left hand margin of the application, and also the blanks for applicant's description. The remainder of the application need not be filled out by or in the presence of the Permit Agent. If the applicant has conscientious scruples against taking an oath, he may make affirmation to the truth of his statements and answers in the application.

Section 23.

Each application shall be accompanied by four unmounted photographs of the applicant, not smaller than two by two inches nor larger than three by three inches in size, on thin paper with a light background. If the applicant is able to write, he shall sign all four photographs across the front thereof so as not to obscure the features.

Section 24.

A married woman accompanying her husband, or a child or children under fourteen years of age accompanying either parent, may be included in the permit granted to the husband or parent and in such case will not be required to make a separate application. Photographs of persons so included in a husband's or parent's application must be furnished. Group photographs may be used in such cases.

Section 25.

Every applicant shall furnish to the Permit Agent, in addition to any particulars required to be inserted in answer to the printed questions on the application blank, any information which may reasonably be required for the purpose of passing upon his application or for ascertaining the correctness of the particulars stated thereon or otherwise.

Section 26.

Upon complying with these regulations, an applicant shall receive from the Permit Agent a card showing that the application for permission to depart has been filed. This card is not a permit to depart from the United States but is merely a receipt for the application, and for the passport if that has been retained.

Section 27.

Within seven days prior to the proposed date of departure from the United States, the applicant shall again appear before the Permit Agent who received his application. At this time, or as soon thereafter as his case is decided, he shall receive back his passport and, if permission to depart from the United States is granted, the Permit Agent shall affix applicant's photograph to the receipt card previously issued and shall note thereon the fact that such permission has been given. The card then becomes a provisional permit to depart from the United States and must be preserved carefully for

presentation to the proper officials at the point of departure. Such provisional permit is subject to revocation at any time without notice.

Section 28.

An applicant desiring to leave the place where he makes application for permission to depart before receiving notice of the final action may arrange with the Permit Agent at the time of application that the provisional permit to depart, if granted, shall be given through a Permit Agent at some other point. The application receipt card, in such case, shall contain a note to the effect that final action is to be taken by another designated Permit Agent. In such case, the applicant shall apply to the Permit Agent thus designated for notice of decision.

Section 29.

A similar request for a change of Permit Agent may be made subsequently to the filing of the application. A request so made may be received by any Permit Agent but will not be granted without express authorization from the Secretary of State.

Section 30.

Permits to depart from the United States will be granted to applicants by or under the authority of the Secretary of State when it shall appear that there is reasonable necessity for such departure, and when upon investigation, such departure is deemed to be not prejudicial to the interests of the United States.

TITLE 7.

Permits to Enter.

Section 31.

Subject to the exceptions and limitations hereinbefore set forth no alien shall be allowed to enter the United States unless he bears a passport duly visaed in accordance with the terms of the Joint Order of the Department of State and the Department of Labor issued July 26, 1917. Said Joint Order and the amendments thereto and instructions issued thereunder are hereby confirmed and made part hereof by reference, so far as their provisions are not inconsistent with these rules and regulations or with the President's Proclamation of August 8, 1918. A copy of said Joint Order is inserted in the Appendix to these regulations.

Section 32.

In accordance with the provisions of the Presidential Proclamation of August 8, 1918, a visa will be granted only when it shall appear that there is reasonable necessity for entering the United States and when upon investigation such entry is deemed to be not prejudicial to the interests of the United States.

Section 33.

As a restriction additional to those provided by said Joint Order,

hostile aliens shall not enter the United States from Canada unless they either secure visas in the manner prescribed by the Joint Order, or secure permits in the manner prescribed by Title 2, Section 10, paragraph (b), of these regulations.

Section 34.

An alien's passport duly visaed together with a copy of the declaration required by said Joint Order shall constitute a permit to enter the United States within the meaning of the Act of May 22, 1918.

Section 35.

Diplomatic and consular officers of the United States are authorized to collect the following fees:

For visaing each foreign passport (not including passports of officials).....	\$1.00
For preparing visa declaration and administering oath	1.00
For certifying to a copy of a visa declaration pre- viously taken	1.00

TITLE 8.

Control at Point of Entry and Departure.

Section 36.

The actual control of persons departing from the United States at all seaboard and lake ports shall be exercised by the representatives of the customs service of the Department of the Treasury, who shall act as control officers for this purpose. The actual control of persons departing from the United States by land and of all persons entering the United States shall be exercised by the representatives of the Bureau of Immigration of the Department of Labor, who shall act as control officers for this purpose. The Secretary of State may from time to time designate other persons to act as control officers at any place. In all cases where passports or/and permits to enter or depart are required under these regulations each traveller before entering or departing from the United States shall present his passport or/and permit to the Control Officer at the point of entry or departure. He shall also answer such questions and undergo such examination as the Control Officer shall direct. If, as the result of such questioning and examinations, the Control Officer decides that the entry or departure of the holder of the passport or permit would be prejudicial to the interests of the United States, such person shall not be allowed to enter or depart. Under such circumstances the Control Officer shall immediately notify the Secretary of State by telegraph of his decision and shall as soon as practicable, and in no case later than two days after such decision, forward to the Secretary

of State a full report giving the reasons for detention and a full transcript of any testimony or information bearing on such decision.

Section 37.

If the Control Officer shall be satisfied that the permit and passport are valid and regular and have been properly visaed and that the holder presenting them is the person described therein, that neither of them has been altered or tampered with, and that the holder's departure or entry is not prejudicial to the interests of the United States, he shall allow the holder to depart from or enter the United States.

Section 38.

In addition to the control as above set forth of persons generally required to secure permission to depart from or enter the United States, control may be exercised over individuals belonging to classes of persons generally allowed to depart or enter without permits or passports. A Control Officer may temporarily prevent the departure or entry of any such individual, in case he considers such departure or entry prejudicial to the interests of the United States. Such action shall be immediately reported to the Secretary of State with a full statement of the reasons therefor. An individual so prevented from departing or entering shall not be entitled to the benefit of any of the limitations or exceptions contained in Section 9 hereof and his departure or entry is forbidden unless, if an alien, he obtains permission from the Secretary of State, or, if a United States citizen, he obtains a valid passport.

TITLE 9.

Additional Regulations.

Section 39.

The Secretary of State is authorized to make regulations on the subject of departure from and entry into the United States additional to these rules and regulations and not inconsistent with them.

WOODROW WILSON.

THE WHITE HOUSE,
8 August, 1918.

EXECUTIVE ORDER REVOKING POWER AND AUTHORITY IN DESIGNATED
OFFICERS UNDER THE TRADING WITH THE ENEMY ACT.¹

April 11, 1918.

By virtue of the power and authority vested in me by "An Act to define, regulate, and punish trading with the enemy and for other

¹ No. 2837.

purposes," approved October 6, 1917,² I hereby make the following orders and rules and regulations:

SECRETARY OF THE TREASURY.

I. I hereby revoke the authority and power vested in the Secretary of the Treasury by Section XI of the Executive Order of October 12, 1917,¹ to issue licenses to send, take or transmit out of the United States any letter or other writing, book, map, plan or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy, in any way relating to letters patent, or registration of trade-mark, print, label, or copyright, or to any applications therefor; and no such license shall be granted until further order.

FEDERAL TRADE COMMISSION.

II. I hereby revoke the power and authority vested in the Federal Trade Commission by Section XVII of the Executive Order of October 12, 1917, to issue licenses to any citizen of the United States or any corporation organized within the United States, to file or prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label or copyright, and to pay any fees or agents' fees in connection therewith; or to pay to any enemy or ally of enemy any tax, annuity or fee in relation to patents, trade-marks, prints, labels and copyrights; and no such license shall be granted until further order.

WOODROW WILSON.

THE WHITE HOUSE,
11 April, 1918.

AN ACT TO PUNISH THE WILFUL INJURY OR DESTRUCTION OF WAR MATERIAL, OR OF WAR PREMISES OR UTILITIES USED IN CONNECTION WITH WAR MATERIAL, AND FOR OTHER PURPOSES.²

Approved April 20, 1918.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the words "war material," as used herein, shall include arms, armament, ammunition, livestock, stores of clothing, food, foodstuffs, or fuel; and shall also include supplies, munitions, and all other articles of whatever description, and any part or ingredient thereof, intended for,

¹ This SUPPLEMENT, January, 1918, pp. 27 and 51.

² Public—No. 135—65th Congress.

adapted to, or suitable for the use of the United States, or any associate nation, in connection with the conduct of the war.

The words "war premises," as used herein, shall include all buildings, grounds, mines, or other places wherein such war material is being produced, manufactured, repaired, stored, mined, extracted, distributed, loaded, unloaded, or transported, together with all machinery and appliances therein contained; and all forts, arsenals, navy yards, camps, prisons, or other military or naval stations of the United States, or any associate nation.

The words "war utilities," as used herein, shall include all railroads, railways, electric lines, roads of whatever description, railroad or railway fixture, canal, lock, dam, wharf, pier, dock, bridge, building, structure, engine, machine, mechanical contrivance, car, vehicle, boat, or aircraft, or any other means of transportation whatsoever, whereon or whereby such war material or any troops of the United States, or of any associate nation, are being or may be transported either within the limits of the United States or upon the high seas; and all dams, reservoirs, aqueducts, water and gas mains and pipes, structures and buildings, whereby or in connection with which water or gas is being furnished, or may be furnished, to any war premises or to the military or naval forces of the United States, or any associate nation, and all electric light and power, steam or pneumatic power, telephone and telegraph plants, poles, wires, and fixtures and wireless stations, and the buildings connected with the maintenance and operation thereof used to supply water, light, heat, power, or facilities of communication to any war premises or to the military or naval forces of the United States, or any associate nation.

The words "United States" shall include the Canal Zone and all territory and waters, continental and insular, subject to the jurisdiction of the United States.

The words "associate nation," as used in this Act, shall be deemed to mean any nation at war with any nation with which the United States is at war.

SEC. 2. That when the United States is at war, whoever, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, or whoever, with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, shall wilfully injure or destroy, or shall attempt to so injure or destroy, any war material, war premises, or war utilities, as herein defined, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than thirty years, or both.

SEC. 3. That when the United States is at war, whoever, with intent to injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, or whoever,

with reason to believe that his act may injure, interfere with, or obstruct the United States or any associate nation in preparing for or carrying on the war, shall wilfully make or cause to be made in a defective manner, or attempt to make or cause to be made in a defective manner, any war material, as herein defined, or any tool, implement, machine, utensil, or receptacle used or employed in making, producing, manufacturing, or repairing any such war material, as herein defined, shall, upon conviction thereof, be fined not more than \$10,000 or imprisoned not more than thirty years, or both.

PROCLAMATION DECLARING TERMS OF THE SHIPPING ACT AS AMENDED BY
ACT OF JULY 15, 1918, TO BE IN FORCE.¹

August 7, 1918.

WHEREAS, an Act of Congress, entitled "Shipping Act, 1916," approved September 7, 1916, as amended by an Act of Congress entitled "An Act To amend the Act approved September seventh, nineteen hundred and sixteen, entitled, 'An Act to establish a United States Shipping Board for the purpose of encouraging, developing, and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its Territories and possessions and with foreign countries; to regulate carriers by water in the foreign and interstate commerce of the United States; and for other purposes,' " approved July 15, 1918, contains the following provisions:

Sec. 37. That when the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, it shall be unlawful, without first obtaining the approval of the board:

(a) To transfer to or place under any foreign registry or flag any vessel owned in whole or in part by any person a citizen of the United States or by a corporation organized under the laws of the United States, or of any State, Territory, District, or possession thereof; or

(b) To sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, (1) any such vessel or any interest therein, or (2) any vessel documented under the laws of the United States, or any interest therein, or (3) any shipyard, dry dock, ship-building or ship-repairing plant or facilities, or any interest therein; or

(c) To enter into any contract, agreement, or understanding to construct a vessel within the United States for or to be delivered to any person not a citizen of the United States, without expressly stipulating that such construction shall not begin until after the war or emergency proclaimed by the President has ended; or

(d) To make any agreement or effect any understanding whereby there is vested in or for the benefit of any person not a citizen of the United States, the controlling interest or a majority of the voting power in a corporation which is organized under the laws of the United States, or of any State, Territory, District,

¹No. 1471.

or possession thereof, and which owns any vessel, shipyard, dry dock, or ship-building or ship-repairing plant or facilities; or

(e) To cause or procure any vessel constructed in whole or in part within the United States, which has never cleared for any foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

AND WHEREAS the destruction of maritime tonnage during the present war has rendered it imperative that the American merchant marine be retained under American control, and free from alien influence,

NOW, THEREFORE, I, WOODROW WILSON, President of the United States of America, acting under authority conferred in me by said Act, do hereby proclaim that a state of war and a national emergency within the meaning of said Act do now exist, and I do hereby enjoin all persons from doing any of the things in said Act declared to be unlawful.

For the purposes of said Act of Congress, the national emergency herein proclaimed shall be deemed to continue until its termination has been evidenced by a Proclamation of the President.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the District of Columbia this 7th day of August, in the year of our Lord one thousand nine hundred and [SEAL.] eighteen and of the Independence of the United States of America the one hundred and forty-third.

WOODROW WILSON.

By the President:

FRANK L. POLK,

Acting Secretary of State.

PROCLAMATION INCLUDING GERMANS AND AUSTRO-HUNGARIANS IN THE
CUSTODY OF THE WAR DEPARTMENT WITHIN THE TERM "ENEMY"
FOR THE PURPOSES OF THE TRADING WITH THE ENEMY ACT.¹

February 5, 1918.

WHEREAS paragraph (c) of Section Two of the Act entitled "An Act To define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the Trading with the Enemy Act,² provides that the word "enemy" as used therein shall be deemed to mean, for the purposes of such trading and of said Act, in addition to the individuals, partnerships or other bodies of individuals or corporations specified in paragraph (a), and in addition to the Government and political or municipal subdivisions, officers, officials, agents or agencies thereof specified in paragraph (b), of said Section Two, the following:

¹ No. 1427.

² This SUPPLEMENT, January, 1918, p. 27.

Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy;"

AND WHEREAS, under the provisions of and by virtue of the power and authority granted in Sections four thousand and sixty-seven, four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, and in accordance with proclamations and regulations which have been or which may hereafter be made and established thereunder by the President of the United States, certain alien enemies have been, or may from time to time be, transferred after arrest into the custody of the War Department for detention during the war;

NOW, THEREFORE, I, WOODROW WILSON, President of the United States of America, pursuant to the authority vested in me, and in accordance with the provisions of the said Act of October 6, 1917, known as the Trading with the Enemy Act, do hereby find that the safety of the United States and the successful prosecution of the present war require that all natives, citizens or subjects of the German Empire or of the Austro-Hungarian Empire who, by virtue of the provisions of Sections four thousand and sixty-seven, four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, and of the proclamations and regulations thereunder, have been heretofore or may be hereafter transferred after arrest into the custody of the War Department for detention during the war, shall be included within the meaning of the word "enemy" for the purposes of the Trading with the Enemy Act and of such trading; and I do hereby proclaim to all whom it may concern that every such alien enemy who is so transferred, after arrest, into the custody of the War Department for detention during the war, shall be and hereby is included within the meaning of the word "enemy" and shall be deemed to constitute an "enemy" for said purposes.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

DONE in the District of Columbia, this 5th day of February,
in the year of our Lord one thousand nine hundred and
[SEAL.] eighteen, and of independence of the United States the
one hundred and forty-second.

WOODROW WILSON.

By the President:

FRANK L. POLK,
Acting Secretary of State.

PROCLAMATION INCLUDING CERTAIN INDIVIDUALS, AND BODIES AND CLASSES OF INDIVIDUALS WITHIN THE TERM "ENEMY" FOR THE PURPOSES OF THE TRADING WITH THE ENEMY ACT.¹

August 14, 1918.

WHEREAS, section 2 of the Act of Congress, entitled "An Act To define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, known as the "Trading with the enemy Act,"² provides that the word "enemy" as used therein shall be deemed to mean for the purposes of such trading and of said Act:

Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy;"

Now, Therefore, I, Woodrow Wilson, President of the United States of America, pursuant to the authority vested in me by said Act, and in accordance with the provisions thereof, do find hereby that the following named individuals, and bodies and classes of individuals, are natives, citizens, or subjects of a nation with which the United States is at war, and that the safety of the United States and the successful prosecution of the war require that said individuals, and bodies and classes of individuals, be included within the term "enemy", as used in said Act; and therefore I do include hereby within said term "enemy" as used in said Act, the following individuals, and bodies and classes of individuals, to wit:

(1) Wilhelm Forstner, heretofore one of the members of the partnership of F. Speidel Company, heretofore doing business in Providence, Rhode Island, and elsewhere;

(2) Karl Bunz, heretofore one of the officials of the Hamburg American Line, and now in the Federal penitentiary at Atlanta, Georgia.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the United States to be affixed.

DONE in the District of Columbia, this 14th day of August, in the year of our Lord one thousand nine hundred and [SEAL.] eighteen, and of the independence of the United States the one hundred and forty-third.

WOODROW WILSON.

By the President:

ROBERT LANSING

Secretary of State.

¹ No. 1477.

² This SUPPLEMENT, January, 1918, p. 27.

EXECUTIVE ORDER PRESCRIBING RULES REGARDING REPEALS, ALTERATIONS
AND AMENDMENTS OF LOCAL LAWS AND EXPENDITURE OF DUTIES
AND TAXES.¹

December 26, 1917.

WHEREAS Section Two of the Act of Congress approved March 3, 1917, entitled "An Act to Provide for a Temporary Government of the Virgin Islands of the United States",² provides as follows:

That until Congress shall otherwise provide, in so far as compatible with the changed sovereignty and not in conflict with the provisions of this Act, the laws regulating elections and the electoral franchise as set forth in the code of laws published at Amalienborg the sixth of April, nineteen hundred and six, and the other local laws, in force and effect in said islands on the seventeenth day of January, nineteen hundred and seventeen, shall remain in force and effect in said islands, and the same shall be administered by the civil officials and through the local judicial tribunals established in said islands, respectively; and the orders, judgments, and decrees of said judicial tribunals shall be duly enforced. With the approval of the President, or under such rules and regulations as the President may prescribe, any of said laws may be repealed, altered, or amended by the colonial council having jurisdiction. The jurisdiction of the judicial tribunals of said islands shall extend to all judicial proceedings and controversies in said islands to which the United States or any citizen thereof may be a party. In all cases arising in the said West Indian Islands and now reviewable by the courts of Denmark, writs of error and appeals shall be to the Circuit Court of Appeals for the Third Circuit, and, except as provided in sections two hundred and thirty-nine and two hundred and forty of the Judicial Code the judgments, orders, and decrees of such court shall be final in all such cases;

And whereas Section Five of the said act of Congress provides as follows:

That the duties and taxes collected in pursuance of this Act shall not be covered into the general fund of the Treasury of the United States, but shall be used and expended for the government and benefit of said islands under such rules and regulations as the President may prescribe;

Now, Therefore, in virtue of the authority vested in me by the said Sections Two and Five of the said Act of Congress, [I] do hereby prescribe the following rules:

"Repeals, Alterations and Amendments of local laws of Virgin Islands of United States by Colonial Council having jurisdiction, shall be effective and enforced when, and to the extent, said Repeals, Alterations and Amendments are approved by the Governor of said islands, the Governor to state specifically in each case whether his approval is in whole or in part, and if in part only, what part is approved and what part not approved. The President reserves the right to disapprove and set aside any enactments of the Colonial

¹ No. 2777.

² This SUPPLEMENT, April, 1917, p. 96.

Council"; "The duties, less the cost of collection, and the taxes collected in the Virgin Islands of the United States, shall be expended for the government and benefit of said islands in accordance with the annual budget prepared and modified by the local laws; provided, that during this current fiscal year of said islands, in order to provide for the payments of those expenses of said islands formerly paid by Denmark and not provided for in said budgets, and to provide further for other necessary and unforeseen expenses of government, the Governor may authorize such additional expenditures from said funds as, in his discretion, may be necessary for the government and benefit of said islands during this current local fiscal year."

WOODROW WILSON.

THE WHITE HOUSE,
26 December, 1917.

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